

Nos. 15875-76-77-78-79

United States
Court of Appeals

For the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

JOSEPH SALMERI, Appellee.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

FRANCISCO L. PEDRASAZ, Appellee.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

ANTOINE BELLECI, Appellee.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

ANTOINE BELLECI, Administrator of the Estate of
JACQUES CARDINALE, Deceased, Appellee.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

IDALENE J. CARDINALE and FRANCES E. CARDINALE,
Administratrixes of the Estate of FRANK J. CARDINALE,
Deceased, Appellees.

Transcript of Record

In Three Volumes

Volume II

(Pages 57 to 362)

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Appeals from the United States District Court for the
Northern District of California,
Southern Division.

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Appeals from the United States District Court for the
Northern District of California,
Southern Division.

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division

No. 27117

JOSEPH SALMERI,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents.

No. 27119

FRANCISCO L. PEDRASAZ,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents.

No. 27125

ANTOINE BELLECI, Administrator of the Estate
of JACQUES CARDINALE, Deceased,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents.

No. 27364

IDALENE J. CARDINALE, and FRANCES E.
CARDINALE, Administratrix of the Estate of
FRANK J. CARDINALE, Deceased,

Libelants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents.

Before: Hon. Sylvester J. Ryan, Judge.

TRANSCRIPT OF PROCEEDINGS

Appearances

Proctor for Libelants:

SAMUEL VARTAN, ESQ.,
RUSSELL ZACHES, ESQ.,
JOHN J. WHELAN, ESQ.

Proctor for Respondent Cardinale:

MORTON L. SILVERS, ESQ.

Proctor for Respondent Union Oil Co.:

BOYD & TAYLOR, By
FREDERIC G. NAVE, ESQ.

Tuesday, Sept. 3rd, 1957—10:00 A.M.

The Clerk: Salmeri, et al., versus Cardinale, et
al., fifteen consolidated cases for trial.

Will counsel for the Libelants state their appear-
ances for the record?

Mr. Vartan: Samuel Vartan.

Mr. Whelan: John J. Whelan.

Mr. Zaches: Russell Zaches.

The Clerk: Will counsel for the Respondents state their appearance for the record?

Mr. Silvers: Morton L. Silvers for Respondents Cardinale, Idalene Jenner Cardinale and Mrs. Frank Cardinale.

Mr. Nave: Frederic G. Nave for the Respondent Union Oil Company of California.

The Court: All parties ready to proceed?

Mr. Silvers: Yes, your Honor.

The Court: Do you desire to make an opening statement?

Mr. Vartain: Yes, your Honor.

The Court: You may do so.

Mr. Nave: Your Honor, for the purpose of the record, before counsel makes his opening statement, I would like to renew the motion to dismiss the wage actions that have [4*] been filed in four wage cases. One is Salvatore Romeo, Action No. 27157; Joseph S. Romeo, Action No. 27156, Horace Adagio, Action No. 27159, and Francois Cardinale, Action No. 27158, upon the grounds and bases that the Union Oil Company is not their employer and that we do not believe there is a cause of action stated for lost wages against the Union Oil Company.

The Court: You desire to be heard in opposition to this motion?

Mr. Vartan: Yes, your Honor. With your Honor's consent we would like to present a memo-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

random which we are preparing now and we will have it here this afternoon or tomorrow so that your Honor can read the cases we are relying on. As Mr. Whelan stated, the matter was heard before Judge Goodman on motion and exceptions were overruled and memorandums were filed at that time. The matter was briefed, as I recall quite thoroughly, but we would like to supplement that memorandum with anything new that we have so that your Honor can at your leisure read the cases.

The Court: I think it would be sufficient if you just submitted me carbon copies of the briefs you submitted to Judge Goodman, wouldn't be necessary to have new ones typed.

Mr. Vartan: Yes, we can do that, your Honor.

The Court: I haven't had an opportunity to examine your libels in these four suits; I will do so, and at this time I will reserve decision. I feel that no injustice will be [5] done to the Respondent to proceed with the trial, reserving decision on your motion to dismiss.

I take it that you did file exceptive allegations to the libels?

Mr. Nave: Yes, your Honor.

The Court: And they were brought on before Judge Goodman?

Mr. Nave: He overruled it and stated that they should be renewed at the time of trial.

The Court: Yes. I will reserve decision at this time on this motion. I will give you my decision as the trial progresses. In the other cases are you ready to proceed with the trial?

Mr. Vartan: Yes, your Honor.

The Court: You desire to make an opening statement?

Mr. Vartan: Yes, your Honor.

The Court: You may do so.

Mr. Vartan: May it please your Honor, these actions arise from a flash fire and explosion, the explosion being gasoline vapors, during the fueling of a fishing vessel. One member of the crew was killed, two seriously injured and others suffered lesser injuries.

Very briefly, your Honor, the facts, as we see them, and if your Honor will bear with me because we may not [6] read depositions in the course of the trial, I would like to state our complete theory, factually and legally so that as the witnesses take the stand your Honor will know the purpose of their testimony.

On September 28th, 1954, the Santa Lucia was a fishing vessel fishing for anchovies off the coast of San Luis Obispo in Central California. This vessel, your Honor, was a typical fishing vessel, 85 feet in length, carried a crew of 10 men.

On the afternoon of the day of this occurrence the vessel had discharged its catch of anchovies in the Bay of Avila, gone out to the high seas and cleaned up, and they had intended then, your Honor, and it will be important in this case, changed nets and go further south into the San Pedro area to fish for cardines. In other words, they were all through with anchovies.

The Union Oil Company, the Respondent in this

case, the co-respondent, maintained a large wharf or pier at Avila with complete fueling facilities. A diagram, your Honor, for illustration purposes, is on the board and shows this very briefly, the shore is over here, the wharf continues out seaward and enlarges into a rectangle. At this point, which will be called an offset, during the course of the testimony, was maintained a service station, as it were, for marine vessels, a retail sales station and is maintained by Union, [7] of course. This shows an enlargement of this area.

The Santa Lucia at the time of this fire and explosion was tied to the offset as indicated with its bow headed towards shore. Then there was another vessel, a tug called the Avila that was tied up there, some of the witnesses were sitting there fishing. It's about 40 feet away.

The setup here on the fueling station involved the gasoline tank that held, I believe, a couple of thousand gallons of 76 gasoline, which is a regular commercial high octane gasoline.

The pipes leading from this large tank took off from the bottom of the tank, went over in this direction and over here. At the point about six feet from the edge of the dock, your Honor, was maintained a meter which registered the amount of gasoline being delivered from the meter, and then at the meter were two valves to turn the gas off and on. At the edge of the dock was a hose reel with 40 to 50 feet of hose with a nozzle on the end of it which was lowered to the Santa Lucia.

Now, when the Santa Lucia first came in from the

high seas it approached Berth 4, or this area here (indicating), and at that time Mr. Cardinale, the owner and operator of this vessel shouted at the Union Oil man and said, "I want 30 gallons of gasoline."

Caldwell, the Union gas attendant, whose particular [8] job it was to run that fueling station, then directed the Santa Lucia further towards the shore to that offset, and he walked over.

The evidence, your Honor, will show that when the Santa Lucia arrived there and tied up Mr. Cardinale, who was killed in this accident, the skipper, again ordered 30 gallons of gasoline. Mr. Caldwell, who had charge of that marine station for Union Oil, then lowered the gas hose to Mr. Cardinale, checked the meter and saw that it registered zero, turned on the valves and the flow of gasoline began.

Some eight to ten minutes later, your Honor, and the evidence will be in conflict on this point, there will be some evidence to the effect that the skipper yelled up at the Union dock and say, "Hey, haven't I got my thirty gallons yet?"

There will be some evidence which will say that Caldwell, the Union Oil man, first brought up the question of how many gallons were delivered. At any rate, it will be conceded by everybody in this courtroom that instead of 30 gallons, 60 gallons of gasoline passed through that and registered on the meter. It will be conceded, I am sure, by both Respondents in this case, that the gasoline tank, your Honor, that was being filled was limited in capacity

to about 30 to 35 gallons. So we have in this case an over delivery of 20 to 30 gallons of high octane gasoline. [9]

Shortly after the conversation, "Have I got my 30 gallons," or "You have got 60," and so forth, between these two Respondents, there was a sudden flash out in the open.

Following the flash by a second or so was a terrific explosion within the bowels or within the—from the inside of this vessel. Now, that is the heart of the facts of what took place.

The position of the Libelants in this case, your Honor, is that we were members of the crew. As a matter of fact, the evidence will show that they were busy cleaning the net and working and cleaning the hatch at the time this entire fueling operation took place. The dead man and the others, in effect, were innocent bystanders, they had nothing to do with the fueling operations whatsoever.

The Libelants here are in court with the Respondents Union Oil and the Estate of Cardinale, the deceased skipper and operator, shifting the responsibility one to the other. Our position, your Honor, is that they are both jointly and severally responsible to the Libelants.

The Court: What's the basis upon which your Libelants saved liability with respect to the owner of the ship?

Mr. Vartan: The owner of the ship, your Honor, is based upon the marine tort—you mean as to the survival? [10]

The Court: You're suing here on behalf of several seamen.

Mr. Vartan: Yes, your Honor.

The Court: Who are still alive, and on behalf of a deceased seaman?

Mr. Vartan: Yes, your Honor.

The Court: Your libel is a libel in personam?

Mr. Vartan: Yes, your Honor.

The Court: And you are suing as Respondents the owners of the ship and the Union Oil Company.

Mr. Vartan: Yes, your Honor.

The Court: What is the basis of your liability as against the owners of the ship?

Mr. Vartan: It is based upon the negligence of the owners of the ship and it survived his death pursuant to the statutes in this territory.

The Court: In what respect do you allege that the owners of the ship were negligent?

Mr. Vartan: The owner of the ship, your Honor—oh, I get your point. When the gas hose was handed down to the dock, to the deck of the vessel, the man who took the nozzle end of the hose and inserted it into the fill pipe, which was flush with the deck, the gasoline tank being underneath, strapped in the engine room somehow, our position, your Honor, is that Cardinale, the skipper and owner, was actually [11] the man at the other end of the nozzle, as it were when this occurred.

The Court: In what respect do you maintain he negligently acted?

Mr. Vartan: Well, I was just coming to that, your Honor. We are proceeding in this situation and

relying necessarily upon the doctrine of *res ipsa loquitor*. In other words, first this was an accident which wouldn't take place unless somebody was negligent. That's the first essential.

Secondly, the agency, the thing that caused this fire and explosion was in the care, control of both Union Oil Company and Cardinale, the owner and operator of the vessel.

Now, it is our position, your Honor, and under the cases which have been applied to Admiralty torts, *res ipsa* in such situations applies, and we have prepared a brief which sets forth those cases.

Now, our position is that with that showing of exclusive care and control over the instrumentality and agency of the thing that caused this fire and explosion, being in Union Oil and Cardinale, then there is an inference of negligence and the burden is on them to proceed further. They have the superior knowledge. Our boys were busy working on the nets and we, as I have stated, have cited cases, both California cases and cases that have been followed in the Admiralty Court matters. [12]

In the process of proving *res ipsa*, your Honor, we feel that the evidence will probably make out a case of negligence against both of these parties. In other words, Union Oil Company is a purveyor or seller of a dangerous commodity. They were the only persons, Union Oil was the only person who could see this meter, that was the only instrument by which a positive indication of the flow of gasoline could be seen.

The Court: I don't know that the doctrine of *res*

ipsa loquitor applies to the situation. However, I will listen to the evidence. I think you are bound more to prove a negligence of either one or both of the Respondents.

You claim, then, as I understand it, insofar as it is based upon negligence as against both Respondents is that there was negligence in handling of this dangerous material which imperiled the safety of the ship and those aboard here?

Mr. Vartan: Yes, your Honor.

The Court: Do you maintain that the ship itself was unseaworthy?

Mr. Vartan: Well, we are in no position to prove specific acts or specific points involving unseaworthiness, your Honor. We are relying on *res ipsa* and I believe, your Honor, after you read the cases which are almost in point—in other words, in explosions of this nature here, your Honor, where innocent bystanders or the crew that is not involved [13] whatsoever in the process takes place, necessarily all we can do, otherwise we wouldn't have a day in court, is to show who had charge of this thing, and then it's their job to come in and prove that their vessel——

The Court: Perhaps you are confusing the *res ipso loquitor* with the rule of law we have that permits you to establish your case by circumstantial evidence, proof of circumstances. Do I understand, then, that there is no claim by the Libelants that the ship itself was unseaworthy?

Mr. Vartan: Oh, yes, we do claim there was an explosion from within the inside of the vessel; in

what particulars the vessel was unseaworthy, we are in no position to say.

I don't want to take up your Honor's time on the question of damages unless your Honor wants me to precisely state the damages sustained.

The Court: I don't desire to have you make any statement you don't want to make yourself.

Mr. Vartan: Very well, your Honor. Well, very briefly, Jacques Cardinale was killed. He was 47 years of age. His wife and two children, a boy ten and a girl fifteen, both the wife and children reside in Algiers. Depositions have been taken which will be introduced into evidence here.

Then Joseph Salmeri, he was a crewman, his right arm was very badly and seriously injured. Without going into [14] the details he now has very limited use of his right arm, and that is a permanent situation. He has been a seaman all of his life earning three to four thousand dollars a year.

Frank Pedrasaz also was a seaman and he suffered an arm injury and he has a limitation in the use of his arm which will be permanent. He was taken to the Marine Hospital and treated there.

Now, Belleci and Tarantino have lesser injuries which will develop during the trial.

The remaining Libelants, your Honor, are the Libelants for wages against both Respondents.

The Court: Have you filed a claim for maintenance and cure on behalf of these seamen?

Mr. Vartan: Yes, your Honor.

The Court: Are you forcing the claim for cure, or are you resting solely on the claim for maintenance?

Mr. Vartan: We are pressing both maintenance and cure, your Honor.

The Court: Do you maintain that the medical care and attention that these men acquired for their ailments was not obtainable at a marine hospital?

Mr. Vartan: That's right, your Honor.

The Court: Is there any dispute as to the prevailing rate of maintenance that should be allowed in the event an allowance is made? [15]

Mr. Nave: I don't believe there is, your Honor.

The Court: Stipulated that would be \$8.00 a day, then?

Mr. Nave: That's correct.

The Court: Both sides?

Mr. Vartan: Yes, your Honor.

The Court: All right.

Mr. Silvers: I would like to add a few remarks on behalf of my clients. your Honor, the owners of the fishing boat.

The evidence will establish that at the time that the Santa Lucia came alongside to request gasoline it did this for the purpose of filling an auxiliary tank which, as Mr. Vartan indicated, has a capacity of approximately 30 gallons; that Frank Cardinale, one of the decedents and who is one of the co-owners of the vessel, at the time he informed the Union Oil attendant of his desire to take on 30 gallons of gas was on the main deck of the Santa Lucia some 10 feet below the level of the fueling dock where this service station was located.

The evidence will show that in addition to the gas

meter which registered the flow of gas being six feet back from the dock's edge below which Cardinale stood on the main deck of the fishing vessel the meter itself stood only approximately 26 inches above the level of the fueling dock and was not visible to one in Cardinale's position by the fill [16] pipe which was flush with the main deck of the Santa Lucia.

The evidence will show that actually the Union Oil attendant Caldwell did glance at the meter, according to his own testimony, shortly after it began to register the flow of gasoline and observed that it was then at a 20 gallon reading.

The evidence will show that he busied himself with the supplying of water hoses to the vessel and preparing his ticket for the recording of the sale and that he did not again look at the meter until the registration was approximately 58 or 60 gallons.

The evidence will show that at that point he went to the edge of the fueling dock to communicate this information to the decedent Cardinale, Frank Cardinale, who went around, who took out from the fill pipe the nozzle of the gas hose, placed it on the deck went around to the starboard side of the vessel and disappeared from the view of the Union Oil attendant, but reappeared in a very brief interval of approximately a half a minute or a minute with what appeared to be a wooden measuring stick; that Frank Cardinale then proceeded to the fill pipe raised the wooden measuring stick preparatory to inserting it, and at that point there was a flash, an explosion, and fire appeared.

The evidence will further show that one of the crew members of the Santa Lucia just before the explosion took place observed the Union Oil attendant running from the [17] edge of the fueling dock back to the side of a small building on whose side was a fire extinguisher. This is just before the explosion that tore apart the Santa Lucia took place.

There will be further evidence from one of the eye witnesses on the small tug Avila some 50 or 75 feet away from the fishing boat that the Union Oil attendant was seen to run in the direction of the fire extinguisher, that a few seconds after that there was a flash observed, a white flash outside the boat in the area of the dock, and it is our position that the excess flow, the excess amount of gasoline in this case was ignited dockside and communicated to the interior of the vessel where the explosion took place in the engine room below which tore apart the vessel, sinking it and causing the injuries and deaths that have been described, that there is no other explanation for the sequence and visual phenomena which we have just described.

We will produce further affirmative evidence, your Honor, that just 90 minutes before this explosion took place a complete inspection was made of the Santa Lucia by a marine surveyor who by appointment was in Avila that day to make an inspection for insurance purposes for the renewal of the insurance on the vessel, that he inspected—Captain Hanson is his name, Captain Hanson inspected the Santa Lucia some 90 minutes before this explosion making a complete investigation and exami-

nation of all parts of the vessel, [18] including the engine room, the 30 gallon metal gas tank that we have referred to and all fittings and pipes leading to it and from it, that in all respects he found the vessel seaworthy, the tank intact and nothing wrong whatsoever with the fittings; that the explanation and responsibility for the events that followed lie with the Union Oil Company and derived from the negligence of their attendant which I have briefly described for the Court.

Mr. Nave: May it please your Honor, the Union Oil Company in this case, the evidence will show, maintained a service station installation where it supplied gasoline. The hose that runs from the gasoline service station on top of the dock is a hose that is on a reel and is lowered by an attendant and it has what we would call a self serving operation. There is a lever on the end of the hose very similar to the type of hose one finds in a gasoline automobile service station where the person who takes the gasoline inserts the end of the hose into an opening and pushes down a lever so that the gasoline flows from the hose through the nozzle, and to turn it off all that is required is merely to release the handle. It isn't a locking device, it's simply a spring-type nozzle that in this case that Mr. Cardinale had complete control of and he inserted the nozzle into the fill pipe on the deck. There is no pressure, this isn't a pressure operation, it's a gravity-type operation from the fuel tank, [19] the nozzle itself, the brass nozzle, does not fit tightly into the fill stem into the ship, the fishing boat in this case, so if you have a

seaworthy tank, as soon as that tank, whether its capacity is 30 gallons or 35 gallons or somewhere in that neighborhood, as soon as that tank had received its capacity, the gasoline would surge out of the neck of the fuel tank onto the deck so that the operator had complete control, that is, Mr. Cardinale himself, controlled merely by releasing the release thing in his hand to turn it off.

The evidence in this case will show that there was no spilling of any gasoline anywhere, dockside or on the fishing boat itself; that the only answer, the only thing that one could possibly say is that there had to be an unseaworthy gasoline tank here and a failure of the gasoline tank and that the gasoline was brought into that tank, whether it was 30 gallons or 5 gallons or 10 gallons into a tank that was unseaworthy and defective and went down into the bilges of that engine room, that a violent explosion took place, it blew this fishing boat up and caused these injuries that counsel has explained to you.

We believe that the evidence will show, your Honor, that this fishing boat was unseaworthy. The allegations in the complaint that have been filed by Proctors for the Libelants here, all have specific charges in the complaint itself, and I read from Paragraph VIII of one of the complaints, [20] illustrates the same language that is carried forward throughout in which it is charged in the complaint, and I refer to Paragraph VIII, and I am reading from the action 27159, the case of Horace Adagio versus Union Oil Company, in which it is stated that:

“On or about the 28th day of September, 1954, and for a long time prior thereto said vessel was unseaworthy and the decedent, Respondent Idalene Jenner Cardinale failed to supply, keep in order, proper tools and appliances for the purpose of said vessel at all of said times said vessel—said decedent and said Idalene Jenner Cardinale kept and maintained said vessel in an unsafe and defective condition in that there were in the engine room of said vessel certain appliances, machinery, appurtenances and equipment capable of giving and which did give off and emit sparks and flames and were uncovered, exposed and uncapped and the sparks and flames on and about said vessel were unconfined in that said decedent and Idalene Jenner Cardinale kept and maintained the galley of said vessel and stove pipe therein in such defective and improper [21] condition in that they were old, worn, loose, and with holes in said stove pipe which permitted and caused sparks and flames to be given off and emitted in, around and about said galley and from said stove pipe; that at all of said times said decedent, said Idalene Jenner Cardinale, negligently caused and permitted said unseaworthiness of said vessel and said failure to supply and keep in order proper tools and appliances appurtenant to said vessel to be, remain, and exist.”

We believe that the evidence in this case will show, your Honor, that Captain Hanson, the marine inspector mentioned by Mr. Silvers, approximately two years before this accident had made a marine in-

spection for insurance purposes in which he found the vessel to be dirty, evidence of bad housekeeping, that the wires and conduits were open, were not taped and that the vessel, he gave it, generally speaking, a very bad bill of health.

We will find that a year later, approximately a year before this particular accident, substantially the same conditions were again found to exist by Captain Hanson aboard that vessel; that there was no report made, no other inspection survey made on the day that Captain Hanson came down there. [22] You will find his testimony, which is introduced in the other case, in depositions taken prior to that trial, which will be offered, you will find that Captain Hanson did not know the size of the gasoline tank, made no tests, he didn't know of what material it was made, merely made a cursory examination of the tank itself.

We feel that this is a case that could not possibly have happened under any theory of any type or character whatsoever unless there had been an unseaworthy and defective tank aboard the fishing boat.

The evidence will also show that in the galley of this ship, contrary to posted signs inside the dock there, there was an open flame being maintained in the galley of that ship, and we feel that the evidence will show that there was a violent explosion aboard this fishing boat which transmitted, by blowing up the vessel, fire up onto the dock and that the fire did not originate on the dock.

We will show from all of the evidence that all the equipment on the Union Oil wharf, including the

pipe, the pipelines and tanks show definitely that there was no explosion or rupture. In fact, the gasoline—it didn't burn as a result of the fire being flashed back on the explosion of the vessel and was later salvaged and used.

We feel that this is a case where the evidence is inescapable, that there was an unseaworthy vessel and that the [23] gasoline tank, if it had been normal, a normal gasoline tank, that the excess gasoline would have come back out of the fill pipe and made itself known by spilling on the deck, and then Mr. Cardinale himself having the means by shutting it off merely by releasing the lever, was derelict in his duty in not supplying a seaworthy vessel, not only to the crewmen who are in this Court, but to the Union Oil Company in this case.

Now, I wish to say, inasmuch as counsel has injected the doctrine of *res ipso loquitur*, and I won't argue it at this point, but I would say certainly this is not a case in my opinion where the doctrine of *res ipso loquitur* could possibly aid the plaintiff in producing any burden to go forward or showing any negligence on the part of the Union Oil Company that should permit recovery in this action.

The Court: Proceed.

Mr. Vartan: Your Honor, may I leave the briefs I mentioned at this time?

The Court: I will receive any briefs of the Proctors provided they give copies to the other side.

Mr. Vartan: Mr. Salmeri, will you take the stand?

JOE JOHN SALMERI

a witness called upon his own behalf, having first been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows: [24]

The Clerk: Please state your name to the Court.

The Witness: Joe John Salmeri.

Direct Examination

By Mr. Vartan:

Q. I don't think you have to lean over into that microphone, just sit right back.

What is your age, Mr. Salmeri?

A. Thirty-six.

Q. Are you a married man? A. Yes, sir.

Q. Any minor children living at home?

A. Two.

Q. I see. What are the ages of the children?

A. Three and seven.

Q. What is your wife's name?

A. Mary Salmeri.

Q. What is her age? A. Twenty-six.

Q. How long have you lived in Monterey, California? A. 36 years.

Q. What is your business or occupation, Mr. Salmeri? A. Fisherman.

Q. How long have you followed that occupation? A. About 21 years. [25]

Q. On September 28, 1954, you were a member of the crew of the Santa Lucia? A. Yes, sir.

Q. That is the day of the fire and explosion at Avila, is that true? A. Yes, sir.

(Testimony of Joe John Salmeri.)

Q. How long had you worked on the Santa Lucia prior to September 28, 1954?

A. Oh, about two weeks, maybe three.

Q. Who gave you the job, please?

A. Frank Cardinale.

Q. He was the owner and operator?

A. Yes, sir.

Q. That is the owner and operator of the Santa Lucia?

A. Yes, sir.

Q. When you first went to work on the Santa Lucia, Mr. Salmeri, where did you go with the vessel?

A. Went to Avila.

Q. How long did you fish there?

A. Between two weeks and three weeks.

Q. What were you fishing for?

A. Anchovies.

Q. Now, will you tell His Honor, please, what your duties were on the vessel during the time you were employed there?

A. I was a skiff man and deckhand also. [26]

Q. Did you have anything to do with the operation of the vessel, that is, the machinery?

A. No.

Q. Did you have occasion to go into the engine room in the course of your duties?

A. No, sir.

Q. At any time since you had been on the Santa Lucia?

A. No, sir.

Q. Now, coming to the day of this occurrence, had you been fishing that day?

A. Yes, sir.

Q. And where had you been fishing?

(Testimony of Joe John Salmeri.)

A. Oh, in an area maybe three miles, eight miles, an area about that much.

Q. All right. Now, did you return back to the harbor—I assume you went out fishing in the morning?

A. That's right.

Q. When did you return to the harbor?

A. Oh, somewhere, might be two or two-thirty, somewhere around there.

Q. What was your purpose in returning?

A. To unload our fish.

Q. And you unloaded that where?

A. At one of the docks where they unload fish, I don't know the name of it. [27]

Q. After unloading the vessel where did the vessel go?

A. We went out—we had a few scattered fish in the bilges and had to clean out the hatch.

Q. And where did you do that?

A. We went out, maybe two miles, three miles.

Q. From shore? A. From shore.

Q. Now, after going out and cleaning the vessel, where did the vessel go?

A. After we cleaned it?

Q. Yes. A. We started coming in.

Q. I see. About what time of day was it, then?

A. Well, might be six, six-thirty, somewhere around there.

Q. Subsequently the Santa Lucia tied up at the dock at Avila, is that right? A. That's right.

Q. When the Santa Lucia first approached the Union Oil dock at Avila, did you hear any conversa-

(Testimony of Joe John Salmeri.)

tion between anyone on the Santa Lucia and anyone on the wharf as to the purchase of gasoline?

A. Well, I heard something like talking, but I couldn't get what they were talking about.

Q. In other words, you didn't hear any specific words that were used, is that right? [28]

A. No, sir.

Q. Now, after the Santa Lucia tied up I assume it was at the gas dock, is that right?

A. That is right.

Q. Did you assist in tying? A. Yes, sir.

Q. Now, do you recall hearing any specific words between anyone on the Santa Lucia and anyone on the gas dock after you tied up?

A. After we tied up?

Q. Yes.

A. Probably the same thing, I heard some conversation went on, but I wasn't paying much attention to it.

Q. So you don't remember any specific talk?

A. No, sir.

Q. What were you doing after the vessel tied up?

A. Well, we got towards the center of the hatch and we started talking, going to see what we were going to do with the brail, clean it up or not, and someone suggested why not wait until they started the engines up, otherwise we would need about four men to pull her up.

Q. Pull what up? What are you talking about?

A. This brail, when we brail we put the fish into the hatch, got a long brail like a ring, got a piece of

(Testimony of Joe John Salmeri.)

net with a long tail on it and these anchovies, they guild to this web, [29] and the only way we can get those out, we got to lift them up and get these small scoops and knock their heads off.

Q. The heads of the anchovies?

A. Anchovies, that is right.

Q. I see. And that brail that you're talking about is ordinarily lifted by what means of power?

A. By winch.

Q. And the winches are operated by what?

A. By the engine.

Q. But on this particular occasion was the brail lifted by the power from the engine? A. No.

Q. How was it lifted?

A. By hand, we had three or four men.

Q. How many men?

A. About three or four men.

Q. I see. So you were engaged in that activity, is that right? A. Yes, sir.

Q. Now, it took three or four men to lift the brail; how many men were working on the cleaning process?

A. Well, usually two hold the brail out and maybe a couple of us, one on each side with a scoop, we keep hitting the heads off.

Q. Now will you tell me then what happened after that, [30] after you were working on the net or cleaning the brail, what happened after that?

A. Well, once we got the heads all off the fish fell off onto the deck, we started picking them up,

(Testimony of Joe John Salmeri.)

to gather them up so we could throw them overboard, just maybe get about fifty pounds by that.

Just before—we were down, I was all wet, I was down below and I washed the hatch up and so I figured I will change. So I started, headed for the galley, and I see the skipper, the fish skipper, the fish skipper, the one who lays out the fish, Romeo, I called him and asked him if it was all right if I changed my skivvy shirt and he says, "Sure, go ahead." And I hesitated and I started walking toward the galley door.

As soon as I got one foot in the galley door I heard a boom like that—whish—(indicating) something like that, and then I heard the second blast, was like another boom, that is the last I remember.

I remember I was in the air, my head was like, going just like somebody hit me in the head with a bat or something.

Q. Now, you mentioned that you heard two noises, is that right? A. That's right.

Q. Will you describe the two noises and space them about [31] the way you remember hearing them?

A. Oh, it was like a blast, like a big wish; maybe a second or two later something like a bong just—probably on the first blast I had went—it's hard to explain.

Q. But there were definitely two noises?

A. Two, that's what I heard.

Q. What does your memory next tell you happened?

A. Well, I found myself like coming to, I

(Testimony of Joe John Salmeri.)

couldn't figure out what happened and I started praying and I turned my head to my, facing my right arm, I seen my right arm all disfigured and I didn't know what to do, I just laid there moaning.

Q. Now, Mr. Salmeri, at that time did you recall seeing Jacques Cardinale?

A. Jacques Cardinale? Well, when they lifted me up I was looking down like towards the hatch and I see a body. I didn't know it was him at the time, his head down in the hatch and his feet were facing the stern of the boat. They were on deck, his feet.

Q. I see. Were there any timbers or anything on top of his body?

A. I mean I didn't notice too much.

Q. I see. Now, what occurred after that? Were you able to leave the vessel under your own power?

A. No, sir, someone picked me up and I found out after who it was, and I remember they put me on the stern of the boat [32] and I guess everybody was yelling and crying and all that and somebody kept saying, "Hurry up, pull the skiff, the boat is sinking and the wharf is going to go off."

Q. The wharf what?

A. That the wharf is going to go off, explode or, the tanks and all that.

So I kept looking toward the water, I want to throw myself off the stern I was so scared. So I guess in the meantime they pulled in the skiff and they put me the first one in the skiff and put me down on the skiff.

(Testimony of Joe John Salmeri.)

Q. Was it a practice to have the skiff tied onto the boat and to follow the boat in the water?

A. We always do that.

Q. In other words, it wasn't necessary to lower the skiff from the vessel into the water?

A. No, sir.

Q. It was already in the water?

A. Yes, sir.

Q. You say you were the first one in the skiff?

A. That's what they told me.

Q. Now, will you please estimate for us the length of time it was from the last boom, the second boom or noise until you were taken off into the skiff?

A. I can't say exactly, I mean, might have been maybe seven or eight minutes, somewhere around there, as near as I [33] can figure.

Q. Mr. Salmeri, during the time that you were on the Santa Lucia and during the time you found yourself in the skiff, did you notice any fire on the Santa Lucia? A. No, I never.

Q. Did you see any fire on the Union Oil gas dock while you were on the Santa Lucia and before you were lowered into the skiff?

A. No, I didn't notice, I had my head down and I didn't pay much attention.

Q. Now, subsequently, at any time subsequently did you see fire on the gasoline dock, the Union Oil dock?

A. When I was laying down in the skiff, when

(Testimony of Joe John Salmeri.)

they laid me down I was looking up at an angle, and I could see fire up there.

Q. Where was the fire, please?

A. Around the dock, high flames. At the same time I heard men were hollering that the wharf was going to go off.

Q. I see. You were at that time in the skiff. Can you give us any idea where the skiff was then in relation to the Santa Lucia?

A. It was around the stern of the Santa Lucia.

Q. I mean in feet.

A. The skiff, they run about twenty feet long, I guess, maybe more, twenty-five. [34]

Q. I think you misunderstood my question. When you were in the skiff you testified you looked up and saw flames on the dock? A. Yes.

Q. Now, at that time where was the skiff in relation to the Santa Lucia, how far away was it from the Santa Lucia?

A. From the Santa Lucia?

Q. Yes, when you saw the flames.

A. Well, it was sitting right off the stern of the Santa Lucia, the center of the stern, right off the stern.

Q. As that time had the last crewman entered the skiff or were they still in the process of loading or unloading?

A. Well, I guess I was the first one, they kept loading, there was shouting all about.

Q. Where were you taken then from the skiff, please?

(Testimony of Joe John Salmeri.)

A. To some dock there, I guess to the next dock over.

Q. Where did you go from there?

A. They put me in the French Hospital in San Luis.

Q. How long were you in this French Hospital in San Luis Obispo? A. About three weeks.

Q. And then where did you go, please?

A. Took me to the Monterey Hospital.

Q. How long were you at the Monterey Hospital?

A. About ten days, between ten days and two weeks. [35]

Q. Now, will you please state to your knowledge the injuries that you sustained?

A. Well, by what the doctor tells me——

The Court: Do you intend to offer in evidence the hospital records?

Mr. Vartan: Yes, your Honor.

The Court: Or will you have a stipulation on it?

Mr. Vartan: Well, we just as well—may just as well cover them all. I have the French Hospital bill that is located in San Luis Obispo, that was in the nature of an emergency, and I think it will be stipulated the closest Marine Hospital was in San Francisco.

The Court: How far is San Luis away?

Mr. Whelan: About 250 miles.

The Court: 250 on the way to Los Angeles?

Mr. Whelan: Correct, just about half way.

Mr. Vartan: Down the Coast Highway.

(Testimony of Joe John Salmeri.)

The Court: Can you stipulate this bill is reasonable in amount?

Mr. Silvers: We haven't seen it, your Honor.

The Court: I suggest you do this: I suggest you let counsel look at these papers now and then you can offer them after the luncheon recess, but give them an opportunity to examine them, during recess.

Mr. Vartan: Very well. [36]

The Court: You can look at them during recess.

Mr. Vartan: All right.

The Court: You went to the French Hospital at San Luis there and for how long about?

The Witness: Three weeks.

The Court: Three weeks. Then you went to Monterey Hospital, and how long were you there?

The Witness: Between ten days or two weeks.

The Court: All right.

Q. (By Mr. Vartan): Now, you received fractures to your right arm, is that right?

A. That's right.

Q. And if I may save time I can lead the witness, you received two fractures there, the top of the forearm and two in the lower portion of the forearm?

A. That's right.

Q. Now, you were treated first in San Luis Obispo; what was done for you there?

A. San Luis—well, they gave me two operations there and placed some rods inside my arms.

Q. And how long were those rods, they extended from what to what?

A. The elbow to the forearm.

(Testimony of Joe John Salmeri.)

Q. From your elbow to your forearm? [37]

The Court: Take your coat off and let me see the operation scar. Maybe you can have placed upon the record and agree upon what the arm shows.

Appears to be an operative scar about, I'd say, five to six inches on the inner portion of the lower forearm and there is an operative scar on the back aspect of the right forearm about four and a half inches, appears to be well healed but with definite scar marks.

Any mark up on the top, upper part of your arm?

The Witness: No, it broke and they put a strap on it.

The Court: Two operative scars in his lower right forearm, no operative scars in the upper portion of this right arm.

Mr. Vartan: While he is there, your Honor——

The Court: Has that affected the contraction of your fingers to any extent?

The Witness: Yes, sir, it has.

The Court: Make a fist with your hand?

(Witness complying.)

The Court: The witness appears to be able to make a fist with his hand. Spread your hand open wide like that. (Indicating.)

It appears to be—can you spread it open any farther? [38]

The Witness: Yes, sir.

The Court: Appears to be a limited ability of extension of the fingers and spreading out of his

(Testimony of Joe John Salmeri.)

fingers of his right hand with a distinct elevation of the middle finger.

Can you bring that down?

The Witness: Yes, sir.

The Court: He is able to contract it, but at rest—now, raise it up, slowly now, like this, with your fingers. Appears to be otherwise able to extend his fingers and to contract them.

All right, sit down, sir.

Any objections to the Court's observations?

Mr. Vartan: No, your Honor.

Mr. Silvers: I have no objections.

Mr. Nave: No, your Honor.

Q. (By Mr. Vartan): Now, the rods that were inserted there at the San Luis Obispo Hospital you said ran from your elbow to the wrist, is that right?

A. Yes, sir.

Q. Now, how long, approximately, did those rods remain in your arm?

A. Seven months to a year, I don't know if it was a year or seven months.

Q. You are not sure? [39]

A. No, I never looked it up to make sure of it.

Q. If I were to tell you this accident happened September 28, that one rod was removed in January, the following January and the other rod was removed in April of the following year, would that fit in with your memory?

A. Yes, it was about two or three months after when the second one was.

Q. I see. Now, I think you said there were two

(Testimony of Joe John Salmeri.)

operations. Can you tell the Court what the first operation was as compared to the second operation at San Luis Obispo?

A. Well, as far as I know they operated here on the top of my forearm and over here (indicating). Two days later or three days later, I am not sure, they operated underneath my arm and placed another rod under there.

Q. I see.

A. And put my hand—I don't know what you call it, these weights.

Q. Traction? A. Traction.

Q. Mr. Salmeri, did you receive any other injuries besides the ones you have——

A. Broken shoulder.

Q. Pardon me? A. Broken shoulder.

Q. On which side, please? [40]

A. My right side.

Q. Can you tell us briefly what was done for your shoulder?

A. Well, they kept me in one position for, oh, about, I guess, two and a half weeks with a strap—I don't know if they had a strap or not, no, just one position for about two weeks.

Q. Now, do you have any difficulty with your shoulder at this time?

A. It bothers me at times.

Q. Well, tell us just how and in what respect it bothers you.

A. Well, if I try to exercise it I always get a click in there and the more I do it I keep—begins

(Testimony of Joe John Salmeri.)

to start hurting after and there are times just like I feel a sharp pain in there and times, though, I don't feel anything on it.

Q. And you're pointing to your right shoulder and you're pointing to the point where the fracture was? A. That is right.

Q. Is that where you feel the discomfort or the pain?

A. That's right, right in here (indicating).

Q. Since the accident, Mr. Salmeri, does the appearance of your shoulder bone in that area on the right side, the fractured side, differ from the other side?

The Court: Fracture of his collar bone, the clavicle? [41]

Mr. Vartan: Yes, your Honor.

The Court: All right.

Q. (By Mr. Vartan): Is there any protrusion of the bone after it healed?

A. Well, I feel a bone sticks out on me compared to this side, this bone here.

Q. The right side? A. That's right.

The Court: How much were you receiving aboard the ship, what were your wages?

The Witness: Oh, I was on a salary, your Honor; usually work on a share basis, and I received a check after—I am not quite sure, I think about \$126.00.

The Court: For your three weeks work?

The Witness: Actually worked about two weeks.

(Testimony of Joe John Salmeri.)

The Court: What?

The Witness: We actually worked about two weeks.

The Court: Did you sleep aboard ship?

The Witness: Yes, your Honor.

The Court: You got your food?

The Witness: Yes, your Honor.

The Court: When did you go back—what are you doing now?

The Witness: I work for the Fisherman's Union and they give me a—we call it a patrolman's job. A fishing [42] boat comes to the cannery, I go check the weights, represent the fishing boats—represent the Fisherman's Union and bring that into the union.

The Court: How long have you been doing that?

The Witness: I think I started about eight months or a year after the accident.

The Court: What did you do in the intervening time? How long was it before you went out again to sea?

The Witness: I haven't been out to sea, your Honor.

The Court: When did you go to work after this accident?

The Witness: I haven't been to work, this is the only thing I have been doing.

The Court: The only job you had?

The Witness: Yes, sir.

The Court: That started about when?

(Testimony of Joe John Salmeri.)

The Witness: Well, two years and two months ago I got that job.

The Court: How long after September, '54, was it that you went to work for the Fisherman's Union?

The Witness: Oh, about eight months, maybe it was a year.

Q. (By Mr. Vartan): During the interim before you got this job with the [43] Union you had no work whatsoever, is that right, from the time of the accident until you went to work for the Union?

A. No, sir.

Q. All right. Now, your right arm—are you able to extend your arm and turn your arm in this fashion? (Indicating.)

Turn to His Honor, please. Is that all you can do? A. Yes, sir.

Q. Show what you can do with the left.

A. (Witness demonstrating.)

Q. Now show the right.

The Court: Appears to be at least 50 to 70 per cent limitation on the turning of the arm.

Mr. Vartan: Yes.

The Court: Extension.

Mr. Vartan: Extension of the arm and turning the palm upwards is limited.

Q. (By Mr. Vartan): You can sit down. Do you have any pain at the present time in that arm?

A. Always have a pain in it.

Q. Always have pain? A. Yes, sir.

Q. And you have been told, have you not, that

(Testimony of Joe John Salmeri.)

there is one fracture that hasn't healed even today and it is held [44] together with a rod, is that right?

A. Yes, sir.

Q. And you have been told it would require a bone graft operation for that fracture that hasn't healed in that arm, is that right?

A. Yes, sir.

Q. Why haven't you returned to your occupation as a fisherman, please?

A. Because I can't do it any more.

Q. Now, by the way, in your occupation as a fisherman did you ever go up to Alaska?

A. Yes, sir.

Q. That's a lucrative field in the fisherman's business?

A. Yes, sir.

Q. Up there how do you use your arm, your right hand and left hand in fishing for salmon in Alaska?

A. Use both hands and we use them a lot to take the fish out of the net, with hooks you do that.

Q. I see. And do you feel you are able to use that right hand?

A. No, sir.

Q. I have asked you before we came to court to estimate the earnings for a period of five years prior to 1954 and you have told me, have you not, that your average earnings prior to this accident was \$4,000.00? [45]

Mr. Silvers: Just a moment, I don't think——

A. Yes, sir.

Mr. Silvers: ——this should be limited——

(Testimony of Joe John Salmeri.)

The Court: Yes, objection sustained.

Mr. Vartan: I thought you would be a little more tolerant.

The Court: Perhaps you have his income tax returns that you could show counsel during the recess.

Mr. Vartan: Very well.

The Court: His employment slips and you might get a stipulation that would show what taxes were deducted.

Mr. Vartan: All right. Well, if I may at this point——

The Court: Assuming his employer deducted taxes and filed the usual returns.

Mr. Vartan: Dealing with fishermen, your Honor.

The Court: Well, show counsel what you have.

Mr. Vartan: Yes. I have some figures, the exact earnings, but at any rate your average earnings were what in five years prior to this accident?

A. About \$4,000.00.

Q. All right. Now, in 1955——

The Court: What are you getting now?

The Witness: Your Honor, we figured an average about, maybe about \$50.00 a week. [46]

The Court: Well, do you get expense money, too, in his job?

The Witness: When they send me down south to Port Hueneme they give me expense when I go down there.

(Testimony of Joe John Salmeri.)

Q. (By Mr. Vartan): In your present job you do not use the right arm; is that true?

A. Just write.

Q. I see. Now, when you returned to work in 1955, eight months after this accident, what was your salary? A. \$1,100.00.

Q. That was for the remaining of 1955, is that correct? A. That's right.

Q. Now, in 1956 what was your total income?

A. Somewhere around \$2,600.00.

Q. And currently I believe His Honor covered it, so I think that is all. You may cross-examine.

Cross-Examination

By Mr. Nave:

Q. Mr. Salmeri, if I understood your testimony correctly this morning and if I am wrong, correct me, you stated you had been on the fishing boat Santa Lucia about two weeks before this explosion?

A. Two to three weeks. [47]

Q. Two to three weeks? A. Yes, sir.

Q. Had you ever worked on that fishing boat before? A. No, sir.

Q. You hadn't been aboard the ship before?

A. No, sir.

Q. Where were you hired to go on the Santa Lucia?

A. They called up from Frank, from Frank's house.

Q. Where, sir?

A. He called me at my house.

(Testimony of Joe John Salmeri.)

Q. No, no, I mean what town?

A. In Monterey, sir.

Q. In Monterey? A. Yes, sir.

Q. And then when you went to work there the first time two to three weeks before this explosion, did you go right out to sea or did you work on the fishing boat?

A. No, sir, I went right out to sea.

Q. You went right to sea? A. Yes, sir.

Q. From Monterey? A. Yes, sir.

Q. And where did you go?

A. Went straight to Avila.

Q. Right in that vicinity, you mean? [48]

A. Yes, sir.

Q. Then during the next two or three weeks were you constantly on the fishing boat?

A. Yes, sir.

Q. Going out and having short fishing expeditions, is that correct? A. Yes, sir.

Q. Did you have anything to do during that two or three weeks, or at any other time, in the servicing of the fishing boat, the repairing of it?

A. Well, nets, repaired nets.

Q. On nets? A. Yes, sir.

Q. Were you aboard the fishing boat or working on it when it was repaired at Monterey?

A. No, sir.

Q. You had nothing to do with the painting of it or repairing of it or anything to do with the electrical end of it when it was being repaired in Monterey? A. No, sir.

(Testimony of Joe John Salmeri.)

Q. Now, did you state, sir, that you had never been down in the engine room of that ship?

A. Yes, sir.

Q. Now, in this fishing boat do you know the approximate length of the fishing boat? [49]

A. Well, I don't know the exact length of that one.

Q. Some 72-odd feet, isn't it?

A. 72, 78, 80, 82.

Q. Something like that? A. Yes, sir.

Q. And on the deck, above the deck, the main deck there is a galley, is there not?

A. Yes, sir.

Q. And then forward of the galley there are crew quarters? A. Yes, sir.

Q. Now, in the floor of the crew quarters do you know that there was an open place, an engine hatch that went down into the engine room?

A. Yes, sir.

Q. Now, to get into the engine room on the fishing boat, the only place you could get in the engine room was to go into the crew's quarters and go down this hatchway, is that right?

A. I don't remember now if we had a door on the outside. I knew there was one on the inside, but we had to open a door to go down into the hatch. They do that for—have a door there, somebody fall right through, so they must have had a door there on the other side, I am not sure.

Q. You are not certain about that?

(Testimony of Joe John Salmeri.)

A. No, not about the outside. I know there is one on the [50] inside.

Q. All right. But there is, you do know that there was a hatchway in the crew's quarters with a ladder that went down in the engine room?

A. Yes, sir.

Q. And you have never been down in that engine room at any time? A. No.

Q. So you are not familiar with the equipment that was below decks at all? A. No, sir.

Q. You had never seen the batteries or the electrical panels or switchboards? A. No, sir.

Q. That was below deck? A. No, sir.

Q. Did you at any time ever see this particular gasoline tank that was below deck on the fishing boat? A. No, sir.

Q. Did you ever examine it at any time?

A. No, sir.

Q. Did you know what capacity it was, how many gallons it held? A. No, sir.

Q. Now, in the galley there was a stove, wasn't there? [51] A. Yes, sir.

Q. A cook stove? A. Yes, sir.

Q. And it was on that stove that the meals of the crew and coffee and that sort of thing were prepared, is that right? A. Yes, sir.

Q. On the day of this explosion had you had coffee or anything to eat in that galley?

A. I had a coffee in the morning before we went out.

Q. Coffee in the morning? A. Yes, sir.

(Testimony of Joe John Salmeri.)

Q. Was the entire crew in there at that time having coffee, or were you in there by yourself?

A. Usually we went up there together and we usually have coffee when we get up.

Q. Now, the coffee that was prepared was customarily prepared on a stove with a burner in it, is that right? A. Yes, sir.

Q. And coffee is prepared in a rather large coffee pot? A. Yes, sir.

Q. It is put over a burner?

A. That's right.

Q. And all the meals that are prepared are prepared on that cookstove located in the galley?

A. Yes, sir. [52]

Q. Now, did you have any occasion to go into that galley any time in the afternoon of the explosion? A. Not that I remember of.

Q. Did you have any occasion to observe whether or not there was any flame—— A. No, sir.

Q. ——at the burner? A. No, sir.

Q. You made no observation of it, is that right, sir?

A. No, I don't remember when I was in there.

Q. Now, you were on the deck of the fishing boat, the Santa Lucia, when this explosion took place? A. Yes, sir.

Q. Can you tell me what part of the deck of this fishing boat you were standing or located when this explosion took place?

A. Well, as close as I can get to it, the cabin was probably about here.

(Testimony of Joe John Salmeri.)

The Reporter: A little louder, please.

The Court: Indicating about midships.

The Witness: Say about midship, starboard or port side. (Indicating.)

Q. (By Mr. Nave): What were you doing at the moment of explosion? Were you washing your hands? [53]

A. No, I was going into the galley to change my skivvy shirt.

Q. You were going into the galley?

A. Yes, sir.

Q. Were you in front of the galley door, the door that goes from the deck into the galley?

A. Right in front of the galley.

Q. Right in front of the galley. Then you felt a violent explosion then?

A. Yeah, like a boom, like a swish. I can't—it is hard to explain it.

Q. As a result of this explosion or swish that you have mentioned, you were thrown up in the air, weren't you?

Mr. Vartan: Just a moment, your Honor. We object to that question as assuming facts not in evidence.

The Court: Overruled.

Q. (By Mr. Nave): You were thrown up in the air, weren't you?

A. No, sir, I wasn't.

Q. You were not?

The Court: About what time of the day was this?

The Witness: Your Honor, I figure it was close to 6:30 somewhere.

(Testimony of Joe John Salmeri.)

The Court: In the evening?

The Witness: Yes, sir. [54]

The Court: Had you had your mess?

The Witness: No, sir.

The Court: Were you going in to eat?

The Witness: After we got done, yes, sir.

The Court: The cook was cooking up, was he?

The Witness: Well, he was supposed to be cooking. The way he explained it afterwards——

The Court: No.

The Witness: ——he didn't have the meat on.

The Court: No. Did you see whether he was cooking?

The Witness: No, sir, I didn't see him.

The Court: Was the feed good aboard the ship?

The Witness: Average.

The Court: Did you smell the cooking?

The Witness: No, sir.

The Court: Italian crew? Men of Italian origin, you had an Italian dinner, didn't you?

The Witness: Yes, sir.

The Court: Spaghetti?

The Witness: We have that on Sundays and Thursdays.

The Court: Did you smell any of the sauce being cooked at the time?

The Witness: No, sir.

The Court: All right. [55]

Q. (By Mr. Nave): Now, you heard a boom, boom, is that right?

(Testimony of Joe John Salmeri.)

A. Like a—yes, the first one was like a swish as if——

Q. And the second boom came together in a split second, didn't it?

A. Second or two, right after it.

Q. And the explosion, you say, did not throw you up in the air?

A. It probably did, the second one, that is the one I felt myself. The first one I felt my head as if, well, I don't know how to explain it, then I just felt myself like flying, that is the last thing I remember.

Mr. Silvers: I am sorry, I felt myself like what?

The Court: Going.

The Witness: Flying, I guess.

The Court: You had nothing to do with the loading of this ship at that time with gasoline?

The Witness: No, sir.

The Court: Had you ever before that assisted in taking on gas?

The Witness: Not on that boat, your Honor.

The Court: Not on that ship?

The Witness: No, sir.

The Court: Do you know whether there was another gas tank aboard this ship? [56]

The Witness: No, sir, I don't.

The Court: You know nothing about the mechanism or the layout of the gasoline tanks?

The Witness: No, sir.

The Court: Or the pipes below deck?

The Witness: No, sir.

(Testimony of Joe John Salmeri.)

Mr. Nave: Does the Clerk have the original deposition of Joseph John Salmeri that was taken on August 16, 1956?

Perhaps counsel might stipulate we have true and correct copies of the depositions that were taken on August 16, 1956, reported by——

The Court: Did you file it, gentlemen? Did you file the original?

Mr. Vartan: He took the deposition, your Honor, Mr. Nave.

The Court: I don't see it here in the file unless it is in the Clerk's office.

The Clerk: We will check the Clerk's office during the recess.

The Court: Check during the recess, please.

Mr. Nave: May we refer, gentlemen, to the copy?

The Court: Yes, go ahead.

Q. (By Mr. Nave): Mr. Salmeri, I call your attention to your deposition [57] that was taken in this case on the 16th of August, 1956. You remember that time you came to my office?

A. Yes, sir.

Q. And Mr. Whelan was there and I asked you some questions about this explosion?

A. Yes, sir.

Q. I call your attention, sir, to page 21, counsel, beginning up here in the top. Now, if you will read——

The Court: Now, I know that it is the custom here in California to show the witness——

Mr. Nave: Yes, your Honor.

The Court: ——the statement. You may do that.

(Testimony of Joe John Salmeri.)

Would you also for the purpose of the record interrogate him and ask him, "Were you asked this question and did you make this answer?"

Mr. Nave: Very well, your Honor.

The Court: And then we will have on the record exactly what you have shown to the witness.

Q. (By Mr. Nave): Now, I will ask you at that time and place if you were not asked these questions——

The Court: One question at a time. Were you asked this question and did you make this answer at that time.

Q. (By Mr. Nave): "Question: Were these sounds like boom, [58] boom right together or was there some space between them?"

To which you answered:

"No. it seemed like they come close to me."

Did you give that answer, sir?

A. Close to me?

The Court: Yes, did you make that answer to that question?

The Witness: Yes, I did.

Q. (By Mr. Nave): The next question:

"A matter of a split second?"

"Answer: Yes."

A. Yes, sir.

Q. "Question: All right. Then you were rendered unconscious, you were knocked out, is that right?

"Answer: Well, I was in the air. I don't remember while I was in the air."

(Testimony of Joe John Salmeri.)

That's right, isn't it, sir?

A. Yes, sir.

Q. "Question: You were in the air?

"Answer: I must have been blown up about fifteen feet, I guess." [59]

A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. So there was an explosion and you were thrown up into the air? A. Yes, sir.

Q. Now, you were rendered unconscious, you were knocked out, weren't you?

A. Yes, sir.

Q. When you came to were you still on the deck of the fishing boat or had you been taken into the launch?

A. I was on deck of the fishing boat.

Q. You were on deck. Before this explosion did you smell any gasoline any place? A. No, sir.

Q. At no time did you smell any fumes of gasoline, did you, sir? A. No, sir.

Q. And then you were taken aboard the skiff, were you? A. Yes, sir.

Q. It was at that time after you were on the skiff that you first noticed any flames, isn't that right? A. Yes, sir.

Q. That was some time after this explosion, wasn't it? A. Yes, sir. [60]

Q. And before that you hadn't seen any fire any place, had you? A. I hadn't.

Q. Now, in this explosion, Mr. Salmeri, the fishing boat was blown to pieces, wasn't it?

(Testimony of Joe John Salmeri.)

A. Well, what they told me. I didn't see it myself.

Q. You didn't see it? A. No.

Q. Did you know that the cabin had been blown completely off——

The Court: He says he didn't see it, he was taken to the hospital.

Q. (By Mr. Nave): You never looked back at the fishing boat at any time after you——

A. Just when I was lying down, the only part I seen was the stern part up in the air, the only part I could see.

Q. That is all you could see?

Mr. Vartan: When you were lying down where?

The Witness: Lying down in the skiff, when they laid me down in the skiff.

Q. (By Mr. Nave): Now, Mr. Salmeri, have you ever observed, or have you ever seen the skipper, Mr. Cardinale, putting gasoline in the tanks on the Santa Lucia? [61] A. No, sir.

Q. You never noticed him at any other place taking the gasoline hose and filling the gas tank?

A. Pretty sure I seen him get the hose when they were handing the hose down to him, that's the last I seen him, as far as I can remember.

Q. Do you remember how far, how long before this accident, this explosion it was that you saw Mr. Cardinale take a hose and put gasoline in the gas tank?

Mr. Vartan: Just a minute, your Honor. We object to that as assuming something not in evi-

(Testimony of Joe John Salmeri.)

dence. The man says the last he remembers Mr. Cardinale took the gas hose. Now counsel says when you saw him——

The Court: Objection sustained.

Mr. Nave: I apologize to your Honor and counsel, I perhaps misunderstood him. I thought he said he had seen him do it prior.

The Court: Ask him. Had you seen Cardinale take gasoline aboard this ship before?

The Witness: No, sir.

Q. (By Mr. Nave): You had not. My mistake. I misunderstood you. So on this particular day of this explosion was the first and only time that you ever saw Mr. Cardinale put gasoline into the fishing boat, is that right? [62]

Mr. Vartan: Just a minute. We object to that, your Honor. He didn't testify even on this particular day that he saw Mr. Cardinale put gasoline in. I don't know why counsel persists.

Mr. Silvers: We join in the objection.

The Court: Objection sustained. Where were you on the ship when the ship pulled up to this dock?

The Witness: I was on the side of the boat helping, I had a line ready to wrap around the pilings.

The Court: You're assisting in the docking?

The Witness: Yes, your Honor.

The Court: Did you observe what went on after that?

Mr. Nave: Thank you, your Honor.

Q. (By Mr. Nave): So that there will be no

(Testimony of Joe John Salmeri.)

mistake about this, you did not at any time see Mr. Cardinale receive the gasoline hose, is that right?

A. I seen him get the gasoline hose, yes.

Q. All right. What did you see him do with the gasoline hose on the day of this explosion?

A. That's all I seen him, just handed down the hose, he grabbed it, that is all I seen.

Q. You saw someone pass it down to Mr. Cardinale and Mr. Cardinale got it in his hands? [63]

A. Yes.

The Court: And by Cardinale you mean the owner of the ship?

The Witness: Yes, sir.

The Court: What's his first name?

Mr. Nave: Frank.

Mr. Vartan: Frank.

The Court: We have so many Cardinales here. Is that Francisco Cardinale?

Mr. Nave: Frank, your Honor.

Mr. Silvers: There is a Francois Cardinale.

The Court: All right. This is Frank?

The Witness: Yes, sir.

Q. (By Mr. Nave): Now, you had an arrangement, as I understand your testimony, to work on this fishing boat on a share, is that right?

A. Yes, sir.

Q. You were supplied your food while you worked there, you got that, didn't you?

A. No, sir, we paid our own food.

Q. That was taken out of your share?

A. Take it out of the share, out of the gross.

(Testimony of Joe John Salmeri.)

Q. And if I understood you correctly you had worked there for about two or three weeks on this fishing boat on local [64] fishing, short trips out, and you received some money for that, didn't you?

A. Yes, sir.

Q. How much had you received?

A. I think my check was about \$126.00.

Q. \$126.00? A. Yes, sir.

Q. Out of that your share for the food had been deducted?

A. Had been deducted, yes, sir.

Q. And did that also include deduction for maintenance of the fishing boat, fuel and that sort of thing, gasoline, or do you know?

A. Fuel was taken out.

Q. Fuel was taken out. All right. And then after this accident, explosion, you were in the hospital for a number of months and you went to work for the Fisherman's Union, is that correct?

A. Yes, sir.

Q. You have been working for them ever since, is that right? A. Yes, sir.

Q. And you still are employed there?

A. Yes, sir.

Q. By the Fisherman's Union. I believe you stated that your average earnings are about \$50.00 a week there and have [65] been?

A. Yes, sir.

Q. Now that \$50.00 a week, is that after they deduct the income tax and withholding and that sort of thing, or is that the gross?

(Testimony of Joe John Salmeri.)

A. No, that would be net.

Q. Is that net or gross?

A. That would be net.

Q. That is what you take home, \$50.00 a week?

A. I am judging by the average, I am not sure.

Q. I understand.

The Court: How many deductions—you're married and got two children, any more?

The Witness: That's all, your Honor.

The Court: You got four deductions.

The Witness: Yes, sir.

Mr. Nave: I have no further questions of this man.

The Court: Well, suppose we take our luncheon recess at this time. How is half past one, gentlemen?

Mr. Vartan: I want to make one observation, your Honor, so that I am not more guilty than I appear now, and that is we have one witness—we expected to read some depositions, frankly, your Honor, we didn't know your Honor's views on [66] that.

The Court: We will hear that witness this afternoon. If we have to stay later we will finish that witness' testimony.

Mr. Vartan: Well, it will be very short, I think.

The Court: Don't hurry him. We will sit here until we hear it.

Mr. Vartan: All right.

The Court: Half past one.

(Testimony of Joe John Salmeri.)

(Whereupon, the Court adjourned until 1:30 o'clock p.m. of this date.) [67]

September 3rd, 1957—1:30 P.M.

The Court: Had you completed your cross-examination of this witness?

Mr. Nave: Yes, Judge. Just one moment. Mr. Whelan, will you step up here, please? This isn't on the record.

Mr. Silvers: Am I invited, too?

Mr. Nave: Why, sure.

Mr. Vartan: May I come?

Mr. Nave: You are all welcome.

(Counsel approaching the bench and having colloquy with the Court out of the hearing of the Reporter.)

The Court: Had you completed your cross-examination of this witness?

Mr. Nave: I had.

Mr. Silvers: We have also looked at these hospital records, your Honor, during the recess and we have no objection to having them admitted.

The Court: Received in evidence. Do I take it that that consent also embraces a stipulation that the hospital charges are reasonable in amount?

Mr. Nave: I will so stipulate. [68]

Mr. Silvers: Yes. We reserve, however, any right with respect to the establishment of the availability of the Marine Hospital facilities.

(Testimony of Joe John Salmeri.)

The Court: Well, apparently you have conceded there was no Marine Hospital within a hundred miles.

Mr. Silvers: I think that is right.

The Court: It seems this is emergency treatment and therefore the man was entitled to go to a private hospital.

Mr. Silvers: Initially I am quite sure that was the case.

The Court: However, you may submit any evidence on that aspect of the case.

Mr. Nave: In reference to the hospital records, your Honor, the one that we are concerned with, I agree, only appertains to Mr. Salmeri, I don't want to enter into a stipulation as to others until they are exhibited to us.

The Court: All right.

The Clerk: Libelant's Exhibit 1 introduced and filed into Evidence.

(Whereupon, the foregoing hospital records were marked and introduced into Evidence as Libelant's Exhibit No. 1.)

Mr. Silvers: Shall I proceed, your Honor?

The Court: Just two seconds. [69]

I notice next to this Exhibit are also some doctor bills. Is it conceded that these bills are reasonable in amount as listed?

Mr. Silvers: Yes.

The Court: Both sides?

(Testimony of Joe John Salmeri.)

Mr. Nave: In that particular case, yes, your Honor, as to the one Exhibit.

The Court: All right.

Cross-Examination

By Mr. Silvers:

Q. Mr. Salmeri, I am going to show you a photograph of the Santa Lucia and ask you if that correctly shows the boat as it was so far as its structure is concerned at the time of this accident.

A. The only thing is the turntable, the turntable, see, have that on? I think the turntable was off at that time.

Q. For the record when you say "turntable" what is it you are referring to?

A. This is—that is where we put our seine net, on this table back here, and it has got rollers underneath so we turn it around.

Q. That is the dark object in the sternmost part of the ship, is that right? A. Yes, sir. [70]

Q. And you are not sure whether it was in that position?

A. I think it was off completely.

Q. But with that exception does the photograph show the Santa Lucia as it was the day of the accident? A. Yes, sir.

Mr. Silvers: We will offer this in evidence, your Honor, as Respondent Cardinale Exhibit A.

The Clerk: Respondent's Exhibit A introduced and filed into evidence.

(Testimony of Joe John Salmeri.)

(Whereupon, the foregoing photograph was marked and introduced into Evidence as Respondent's Exhibit A.)

Q. (By Mr. Silvers): With respect to this photograph, Mr. Salmeri, could you show us in what portion of the boat the galley was located?

A. Well, these two windows here are—that's where the galley was. That is the starboard side of the galley.

Q. And that's the after part of the superstructure that is shown here, is that correct?

A. That's right.

Q. The door that is shown immediately above the word "Santa," that is the door that leads to what part of the boat?

A. Well, I think that's—goes right into this compartment here where there is the steering wheel and down below—and also where the bunk rooms are.

Q. Is the entrance to the galley shown on this photograph? A. No, sir.

Q. Where was it?

A. It is on the port side at the end of the cabin there.

Q. You entered the galley from the after end of this house, is that right?

A. The port side.

Q. On the port side? A. Yes, sir.

Q. Is that the door that you were headed for just before the explosion took place?

(Testimony of Joe John Salmeri.)

A. Yes, sir.

Q. So that if I understand you correctly just before the fire and explosion took place you were on the after end of the vessel on the main deck just getting ready to step into the door leading to the galley, is that correct?

A. Just previous to the explosion, yes, sir.

Q. All right. Up to the point that the explosion took place you had never actually entered the galley, is that right?

A. No, sir.

Q. And the first awareness that you had of anything unusual was while you were still outside and heard this swish? [72]

A. Yes, sir.

Q. That kind of sound, is that right?

A. Yes, sir.

Q. And did you say that you felt that in the area of your head?

A. My whole head and my face was just like sort of crumble in on me.

Q. That's where you felt the effects of this initially?

A. Yes, sir.

Q. And you were still outside the house, is that right?

A. So far as I know, yes, sir.

Q. And then the next thing you heard was a boom?

A. About a couple of seconds after I heard something like a boom, just like—felt myself going. After that I don't remember anything else.

Q. So far as the appearance of fire or flames is

(Testimony of Joe John Salmeri.)

concerned, you first saw flames when you were in the skiff after you had been removed from the fishing boat to the skiff, is that right?

A. Yes, sir.

Q. At that time you saw flames on the oil dock, is that right?

A. Yes, sir. It was right above my head—I mean, looking up.

Q. Was that the place where the gasoline and the gasoline [73] hose that was used to fuel the Santa Lucia on this occasion were located?

A. Yes, sir, so far as the area where the fire was coming from.

Q. So far as the area was concerned the fire that you saw was in the area of the gasoline hose that was used to bring the gas to the Santa Lucia on this particular day?

A. Yes, sir.

Q. At that time when you were on the skiff you observed no flames on the boat itself? Right?

A. No, sir.

Q. You have told us that the brail was being raised by hand power, is that correct?

A. Right.

Q. The reason for that is that the main engines had been cut before the boat tied up alongside this service station for gas, right?

A. No, they were cut after we tied up.

Q. Just after you tied up?

A. Yes, sir.

Q. The engines were cut, however, before you saw the gas hose handed to Frank Cardinale by the Union Oil gas attendant up on the dock; right?

(Testimony of Joe John Salmeri.)

A. Yes, sir.

Q. So the engines weren't operating at all after the boat [74] was tied up? A. No, sir.

Q. Now, I take it that with your cargo of anchovies there was a very strong odor of fish about this boat, isn't that correct? A. Yes, sir.

Q. At the time of the gassing? A. Yes, sir.

Q. That was the strongest and most predominant odor that anyone, so far as you could tell, that anyone could smell on the boat, is that right?

A. Yes, sir.

Q. And you have testified, Mr. Salmeri, that approximately 7 to 8 minutes went by from the time you heard this swish sound, followed by the boom, and the time that you found yourself aboard the skiff and saw the fire on the oil dock; is that right?

A. Yes, sir.

Q. Did you observe the Union Oil attendant who handed Frank Cardinale the gas hose at any time other than when the hose was being handed to Cardinale?

A. No, just that once I looked up and I seen him.

Mr. Silvers: I have no further questions at this time.

Mr. Nave: May I inquire if something was [75] brought out, your Honor?

The Court: Yes, sir.

Mr. Nave: May I have the Cardinale Exhibit A, the medical record?

(Testimony of Joe John Salmeri.)

Recross-Examination

By Mr. Nave:

Q. Mr. Salmeri, you received some burns in this explosion, didn't you? A. Yes, sir.

Q. What part of your body was burned?

A. Well, they say it was flash burns on my arm.

Q. You speak of your right arm there; there were flash burns on your right arm?

A. Yes, sir.

Q. How were you dressed at the time? Did you have a jacket on or a shirt or were you in a T-shirt? Just how were you?

A. A skivvy shirt, T-shirt.

Q. T-shirt? A. Yes, sir.

Q. Is that the shirt that has a short arm down maybe three or four inches from the shoulder——

A. Yes, sir.

Q. ——and then your arm is bare underneath that? [76] A. Yes, sir.

Q. And you got these flash burns on your right arm? A. Right arm.

Q. Any place else? A. Not that I know of.

Q. Did you get any in your face?

A. No, sir.

Q. Or any part of your—— A. No, sir.

Q. ——part of your body? A. No, sir.

Mr. Nave: May I have that photograph that Mr. Silvers produced in evidence, your Honor? Thank you.

(Testimony of Joe John Salmeri.)

Q. (By Mr. Nave): Now, Mr. Salmeri, you looked at this photograph that Mr. Silvers handed you a few minutes ago. Are you familiar with the bridge or the pilot house of that ship as to where the engines can be turned off or turned on?

A. No, I have taken the wheel, but never the control.

Q. Do you know anything about how you turn off the main engine or how you start the main engine?

A. No, sir.

Q. Do you know anything about how you turn off the auxiliary engines?

A. No, sir. [77]

Q. Do you know whether or not the auxiliary engines are connected with compressors or not?

A. No, sir.

Q. Do you know whether or not they are automatic starting or not?

A. No, sir.

Q. Do you know how one would turn off the auxiliary engines?

A. No, sir.

Q. So when you stated, sir, that the engines were turned off when the ship came into the dock, what are you basing that statement on?

A. Well, if the engine is on you can hear it in the muffler.

Q. You mean you couldn't hear any sound of engines?

A. Couldn't hear no sound of anything.

Q. You didn't see anyone turn off the main engine?

A. No, sir.

Q. You didn't see anyone turn off the auxiliary gasoline engine?

A. No, sir.

(Testimony of Joe John Salmeri.)

Mr. Nave: Thank you.

Mr. Vartan: One question, your Honor. [78]

Redirect Examination

By Mr. Vartan:

Q. Where is the muffler located that you can hear if the engine is on or not?

A. It is situated—can I explain it, your Honor?

The Court: The stern of the ship, isn't it? Where the muffler usually is, or is it at the side?

Mr. Vartan: I think this is a little different, your Honor.

The Witness: It is right—behind these men is a smokestack and whenever it's on you could actually hear it, the vibration of the boat, and once that is off you know everything is off.

The Court: Protrudes through the upper deck?

The Witness: Yes, sir.

Mr. Vartan: We have no further questions.

The Court: All right, sir, thank you.

Now, you want to make that telephone call?

Mr. Nave: I would appreciate it.

The Court: We will wait here for you. May I have those hospital notes and I will make some notes from that.

Mr. Nave: Thank you, your Honor.

The Court: Are you ready to proceed? Next Witness. [79]

Mr. Silvers: I have just one question I would like to ask of this witness.

The Court: All right.

(Testimony of Joe John Salmeri.)

Recross-Examination

By Mr. Silvers:

Q. Mr. Salmeri, was the door to the galley open at the time you approached it just before this explosion? A. Yes, sir.

Q. There were portholes on both the port and starboard side of that deckhouse, were there not?

A. Yes, sir.

Q. They were open also at the time?

A. I don't remember if they were open at the time. We usually leave them open to air out, to get fresh air in there.

Q. And inside this deckhouse, you have already told us, is the hatchway which leads to the engine room below, isn't that correct?

A. In the bunk compartment.

Q. There is nothing that separates, no physical wall or bulkhead of any kind that separates the area that the portholes look onto and the galley door leads into from the hatchway leading to the engine room, is that right? A. No, sir.

Mr. Silvers: That is all. Thank you. [80]

Mr. Vartan: That is all.

The Court: Although the witness has testified that he was treated at the Monterey Hospital the hospital records introduced in evidence does not contain the Monterey Hospital records.

Mr. Vartan: Yes, your Honor. We are attempting to get those.

The Court: All right.

Mr. Vartan: We are aware of it.

The Court: Simply want to call that to your attention.

(Witness excused.)

The Court: All right. Thank you. Next witness.

Mr. Vartan: Horace Adagio, please. [81]

HORACE ADAGIO

called as a witness in his own behalf, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name.

The Witness: Horace Adagio.

Direct Examination

By Mr. Vartan:

Q. Mr. Adagio, I want you to talk slowly and if you don't understand any of the English words we use, don't be embarrassed, just speak up. Okay?

A. Yes, sir.

Q. You speak French, don't you?

A. Yes, sir.

Q. Where do you live, Mr. Adagio?

A. You mean right now?

Q. Yes. A. In San Pedro.

Q. What is your age? A. 27.

Q. What has been your occupation?

A. Fisherman.

Q. Have you had any other occupation?

(Testimony of Horace Adagio.)

A. No.

Q. That has been your work? [82]

A. All my life, yes.

Q. All your life. How long have you lived in the United States? A. Three years.

Q. Where did you come from?

A. From Algiers, North Africa.

Q. Algiers, North Africa. Were you aboard the fishing vessel Santa Lucia at the time of the fire and explosion? A. Yes, sir.

Q. Who hired you?

A. Crewman, you mean?

Q. Who gave you the job?

A. Mr. Frank Cardinale.

Q. How long were you on the Santa Lucia before this happened? A. Almost two months.

Q. Almost two months. Will you tell the Court what was your work on the boat, what did you do?

A. Crewman.

Q. What's that? A. Crewman.

Q. Crewman. Did you have anything to do with the engines? A. No, sir.

Q. Or any of the machinery on the boat?

A. No, sir. [83]

Q. Did you do any repair work of any kind?

A. No, sir.

Q. Did you operate the boat in any way at any time?

A. No, sir, just nets, fixing the nets.

Q. You just fixed the nets? A. Yes.

Q. Mr. Adagio, had you ever been in the engine

(Testimony of Horace Adagio.)

room of the Santa Lucia?

A. No, sir.

Q. Where were you on the boat when the fire and explosion took place?

A. If I can look, I can explain to you as I remember.

Q. All right. You mean you want to see the picture?

A. Yes, please. We can see from here I was on the right side, here on the right side (indicating).

Q. On the aft end of the vessel, the back end?

A. On the vessel on the—I don't know what you call it, I was just on the first side, just about right here (indicating).

Q. You were right back of the superstructure?

A. Yes, sir.

Q. The house that is on the boat?

A. Yes, sir.

Q. You were right back of that?

A. Yes, sir. [84]

Q. On the right side? A. Yes, sir.

Q. I think that is it. You were on the side of the boat away from the gas dock, is that right?

A. Yes, fronting the ocean.

Q. Yes, in other words, fronting the ocean. You were on the—well, I think we have established that.

Mr. Adagio, just before this happened, what was your position, were you standing up, sitting down, lying down, or what? A. I was standing up.

Q. You were standing up? A. Standing up.

Q. What happened to you when it happened, what happened to your body?

(Testimony of Horace Adagio.)

A. Can I show it?

Mr. Vartan: Your Honor, can he——

The Court: Surely.

Q. (By Mr. Vartan): Yes, you can show.

A. I was standing up like I am now and the front of the boat and back, I was just like I am now, and the only thing is, just sort of a big boom, and I turn around and I fall down on my knees (indicating).

Q. On both knees? [85]

A. Both knees.

Q. Now, you just showed that when you turned around, you made a complete turn to the right, is that right? A. Yes, that is the way I did.

The Court: Half turn.

Q. (By Mr. Vartan): Half turn.

(The Court and the witness talking together in French; unintelligible to the reporter.)

Q. (By Mr. Vartan): Now, you found yourself on your two knees. What happened after that, will you tell us?

A. And I wanted to get up, but something hurt my back and I fall flat, I mean, on the deck. So when I get up, the first one is Mr. Tarantino——

Q. Talk slow. Go ahead.

A. All right. And Mr. Tarantino was on his face and pulled him into the skiff, and so I picked him up into the skiff, and I saw Cardinale, Francois Cardinale. the one that is French, he was standing

(Testimony of Horace Adagio.)

up on the skiff, because he was in the ocean when the explosion took place. So after he told me——

Q. Talk slow.

A. And Salmeri, he was crying for his arm.

Q. That's Mr. Joe Salmeri?

A. Joe Salmeri. So I grabbed him and pulled him on the [86] skiff and Mr. Tarantino and the Spanish guy, he was a crewman with us.

Q. What was his name?

A. I don't remember.

Q. Frank Pedrasaz? A. I don't know.

Q. Anyway, he was a Spanish guy?

A. Spanish guy.

Q. Okay.

A. And he was telling me what was broken right here. So I saw Mr. Romeo pull in my brother-in-law.

Mr. Nave: Your Honor, please, I am sorry, but I can't understand this.

The Court: He said he saw.

Mr. Nave: I have difficulty in understanding the witness.

The Court: Do you want to sit over here closer? You may.

You said you saw—what did you see?

The Witness: I saw Mr. Romeo pull in my brother-in-law. He was the cook on the boat.

The Court: What is your brother-in-law's name?

The Witness: Mr. Belleci.

The Court: Who is Romeo, what's his full name? Salvatore Romeo? [87]

The Witness: Salvatore Romeo.

(Testimony of Horace Adagio.)

The Court: You saw Salvatore Romeo doing what?

The Witness: Pulling my brother-in-law from the kitchen.

The Court: Pulling your brother-in-law out the kitchen?

The Witness: Yes.

The Court: Who is your brother-in-law, what was his name?

The Witness: Antoine Belleci.

The Court: Go ahead.

The Witness: So I bring to my brother-in-law to the skiff, too, so Mr. Romeo jump in the skiff and before he jump in the skiff, he said we got one man that is dead, so that remind me I got another brother-in-law on the boat, that's the one is dead now. He was laying half inside where we put the fish——

The Reporter: Wait a minute. I didn't get that.

The Court: "He was laying half inside where we put the fish"?

The Witness: Yes, sir.

Q. (By Mr. Vartan): That was your dead brother-in-law, Jack Cardinale?

A. Yes, on the boat was three brothers-in-law.

Q. Talk slower, because this man has to write down what [88] you say. If you talk fast, you know, he might forget to put everything down, so just talk a little slower.

Now, you told us, the last you said, you remem-

(Testimony of Horace Adagio.)

bered the other brother-in-law, and what happened then?

A. And Mr. Romero jump on the skiff and I was the only one, so I turn around to my brother-in-law, the one that was dead.

Q. You were the only one left on the Santa Lucia?

A. I was the last one.

Q. Yes.

A. So I took to him—I mean, I tried to talk to him to do something, you know, and then the boat goes—was just back, goes a little bit, you know—(indicating).

Q. Well, you are showing with your hands right then when you were trying to talk to your brother-in-law, you didn't know he was dead then, did you?

A. He was dead, so I saw his face, you know, he was all broken.

Q. All right. But anyway, right then you went like this with your hands (indicating), and what did you mean by that?

A. The boat was a little bit like that, so—but you know I can't tell you how many minutes it was or what, because I don't know, you know, I wasn't thinking about it, so the boat goes like that and my brother-in-law got a lot of things on top of him, so I can't pull him, so I tried to pull him and put him in the skiff, but I couldn't. [89]

Q. What did he have on his body?

A. The nets, wood, you know.

Q. In other words, his body was covered with things?

A. Yes, half.

(Testimony of Horace Adagio.)

Q. Half of the body?

A. Yes. So then the water come up on me and Mr. Romeo wants to leave, you know, he said we better go, because the thing is going to explode, you know.

Q. You are pointing like this. What did you mean when you were pointing? A. The tank.

Q. On the dock?

A. Yes. So I can do nothing any more for my brother-in-law, so I jump on the skiff and, you know, row, too, you know, to another dock, you know, to the shore.

The Court: You told us you had three brothers-in-law aboard the ship?

The Witness: With me, three; two.

The Court: Two brothers-in-law.

The Witness: Two, Antoine Belleci and Jacques Cardinale and me.

The Court: I see.

Q. (By Mr. Vartan): Now, Horace, did you see any fire any place after the fire and [90] explosion? A. Yes, sir.

Q. Where was it that you first saw any fire?

A. When I turn around to pick up Salmeri.

Q. Salmeri?

A. And so when I turn around and saw the fire on the deck, on the wharf, all of it.

Q. When you're pointing like that, you said deck. Do you mean deck or dock?

A. The dock, I mean, yes.

Q. Where the gas pump and tanks are?

(Testimony of Horace Adagio.)

A. Exactly.

Q. You saw the fire up there?

A. Up there and on top of the water.

Q. And on top of the water. A. Yes, sir.

Q. Horace, at that time did you see any fire on the Santa Lucia? A. No, sir.

Q. I know you already told the Court, it is hard for you to tell how many minutes went on during this time, but can you give us your best idea how long it was from the time that you were knocked down to your knees and until you, the last person, jumped in the skiff? A. I can't tell you. [91]

Q. You can't tell us?

A. No, the time I bring the guy on the skiff and the time, I can't figure out what time it was.

Q. All right. Mr. Adagio, were you the last one on the Santa Lucia when it started sinking?

A. Yes, sir.

Q. You were alone at that time?

A. Yes, sir.

Q. You are sure of that? A. Positive.

Q. And the reason you left your brother-in-law when you did was because the vessel was almost going under, is that right? A. Yes, sir.

Q. Will you tell us, if you recall, what part of the vessel was going down first, the front end or the back end?

A. The front, the back was the last one.

Q. The back was the last one. And you got off at the back end, of course? A. Yes, sir.

Q. When you left the boat—you were the last

(Testimony of Horace Adagio.)

one to leave—and when you left the Santa Lucia did you observe any flame or fire on the Santa Lucia just when you were leaving? A. No, sir.

Q. Later on did you see any fire in the Santa Lucia? [92] A. Yes, sir, all over.

Q. How long afterwards?

A. I think about five minutes, ten minutes, maybe.

Q. Had the skiff left the Santa Lucia when you first saw fire on the Santa Lucia?

A. Yes, sir, we were about, we row about from Salmeri to here, maybe a little bit more.

Q. All right. Mr. Adagio, during the few months that you worked for the Santa Lucia, that is, before this happened, was it fishing all the time? I mean, would it go out fishing every day for two months, or just parts of the time?

A. Yes, sir, every day.

Q. Can you tell us about what you were earning, how much money did you receive for your share per month for the two months you were on the Santa Lucia?

Mr. Nave: May I have an objection, if the Court please?

The Court: Yes, this is received subject to your motion to dismiss this libel. This man's only claim, as I understand it, is for wages.

Mr. Vartan: Yes, your Honor.

The Court: And his wages were dependent upon the total earnings of the ship, is that right?

Mr. Vartan: That's right.

(Testimony of Horace Adagio.)

The Court: You better ask him as to how his compensation [93] was measured.

Q. (By Mr. Vartan): How were you paid on the vessel, how were the crewmen paid?

A. Share.

Q. Share? A. Yes, sir.

Q. And you had one share, did you?

A. Yes, sir.

Q. And then the owner of the vessel, how many shares did he have? A. I don't know.

Q. You know you had one share?

A. I know I had one share, yes, sir.

Q. For your one share, what was your income for two months when you were on the Santa Lucia before the fire and explosion?

A. One share give me about, over one hundred, and the second one when I was on board, I think it was under thirty.

The Court: Under what?

The Witness: Under thirty.

The Court: \$130 for the two months, or for one month.

The Witness: For two months.

The Court: For two months. Let me ask you a question: Did you sign any articles aboard this ship? Did you [94] sign any shipping articles?

Mr. Vartan: I can help you, your Honor, on that.

The Witness: I don't understand.

Mr. Vartan: The vessel, the owner of the vessel,

(Testimony of Horace Adagio.)

had articles between the union and the vessel, which we have a copy of.

The Court: He had a contract with the union, but were there seaman's articles signed?

Mr. Vartan: No, your Honor.

The Court: Which bound the ship to pay this man any stipulated wages?

Mr. Vartan: No.

The Court: Or which bound this man to any particular voyage?

Mr. Vartan: No, your Honor, we have not.

The Court: So that this man could have left the ship any time it came into port, is that correct?

Mr. Vartan: Let's ask him.

The Court: I don't know, if that is so, I don't see where you have any claim here.

Mr. Vartan: Your Honor, to explain our lack of knowledge on some of these things, these men have been on the high seas, and we haven't been able—this man just came up from San Pedro and I don't want your Honor to think we have been lax. [95]

The Court: I have no such thought. I am looking at it purely from a legal point of view.

Mr. Vartan: Yes, your Honor.

The Court: If this man received as compensation by way of receiving a share of the earnings from each one of these fishing excursions which were made daily and he could have left the ship at any time, or the ship could have discharged him at any time when it came back to port and San Luis was the home port of the ship, there was no obligation

(Testimony of Horace Adagio.)

on him to stay and no obligation of the ship to keep him to the end of a voyage; therefore, I don't see how you have any claim for anything here by way of wages or lost profits.

Mr. Vartan: Well, our position, I will develop——

Q. (By Mr. Vartan): Now, Mr. Adagio, when you were hired by Mr. Cardinale, as you stated, for how long were you hired, what period of time?

A. What do you mean, hired?

The Court: Did you sign any paper?

The Witness: No, sir.

The Court: He was your brother-in-law, wasn't he? Cardinale, the owner of the ship, was your brother-in-law?

The Witness: Frank Cardinale—no, it wasn't. Jacques Cardinale was my brother-in-law.

The Court: Jacques Cardinale.

Mr. Vartan: That's a different Cardinale. [96]

The Court: That is another Cardinale.

Did you sign any paper?

The Witness: No, sir.

The Court: Did he sign any paper and give it to you when you went aboard the ship?

The Witness: No, sir.

The Court: Where was the home port of your ship, San Luis? Where did your ship sail from?

The Witness: From Monterey.

The Court: Monterey.

The Witness: Yes, sir.

(Testimony of Horace Adagio.)

The Court: How long were your trips out to sea?
Did you go out every day?

The Witness: Every day.

The Court: And come back every night?

The Witness: Every night, yes.

Mr. Vartan: Were you through, your Honor?

The Court: Yes.

Q. (By Mr. Vartan): When you were fishing in San Luis Obispo you didn't go back to Monterey every night, did you? A. No, sir.

Q. The day that this explosion took place, you had finished anchovy fishing, isn't that true?

A. Yes, sir. [97]

Q. Where was the vessel going then next?

A. To make gasoline.

Q. And after making gasoline, where were you going to go to fish? A. Sardines.

Q. When did the season start?

A. First of September.

Q. You mean October? A. October, yes.

Q. And it would last how many months, the sardine season? A. Yes, sir.

Q. How many months would it take to finish the sardine season? A. Three months.

Q. About three months.

The Court: Where would you go for the sardines?

The Witness: San Pedro.

The Court: San Pedro, California?

The Witness: Yes, sir.

(Testimony of Horace Adagio.)

The Court: And come back every night to Monterey?

The Witness: No, no.

Mr. Vartan: No, your Honor. I can understand why your Honor asked that question, being from New York, but San Pedro is way down the coast.

Counsel, how many miles would you say, about 500 [98] miles?

The Court: Down below Los Angeles, isn't it?

Mr. Vartan: Yes, your Honor.

The Court: I have been there.

Mr. Nave: Monterey is approximately halfway, so it is about 200 miles from Monterey.

Mr. Vartan: I might state for the record and ask your Honor to reserve your feeling on the subject, Mr. Zaches, who is familiar with this situation, being from Monterey, tells me that a union agreement was executed on behalf of all fishermen which the owners and operators of the vessels signed and the union, of course, signed on behalf of the fishermen, which has specific provisions, we feel, in the nature of a charter or in the nature of an employment contract, that they cannot fire a man after the season starts, and so forth, so we intend to go into that at the latter part of this trial.

The Court: All right.

Q. (By Mr. Vartan): Mr. Adagio—

Mr. Vartan: All these questions, your Honor, for the record, are on behalf of the death case.

The Court: On behalf of his own claim, have you shown that he tried to get a job as a fisherman?

(Testimony of Horace Adagio.)

Have you shown he has tried to get other work as a seaman?

Mr. Vartan: Well, we will develop that. [99]

The Court: Isn't he under any obligation to minimize damages, or do you claim he can sit on the beach for three months and draw his wages?

Mr. Vartan: No, that is what I say, we were going to defer that phase of it.

The Court: All right, but you have him on the stand here, you better ask him that question now.

Mr. Vartan: All right.

Q. (By Mr. Vartan): What did you do after, when did you first work after the Santa Lucia was sunk? A. About two or three weeks after.

Q. About two or three weeks afterwards; and for whom did you work?

A. For Mr. Romeo.

Q. Sal Romeo? A. Sal Romeo.

Q. Where did you work?

A. Santa Barbara. We met and we go to San Pedro.

Q. What did you fish for? A. Sardines.

Q. Did you earn more or less than you were earning on that Santa Lucia

Mr. Nave: Object to that as being too speculative. No foundation for that at all. [100]

Mr. Vartan: All right.

The Court: By your comments you have withdrawn your question?

Mr. Vartan: Yes, Your Honor.

(Testimony of Horace Adagio.)

Q. (By Mr. Vartan): Jacques Cardinale, you testified, was your brother-in-law, is that right?

A. Yes, sir.

Q. And his wife, Marie, is your sister?

A. Yes, sir.

Q. Where does she live, please?

A. In Algiers.

Q. In Algiers. Did you come to this country the same time that your brother-in-law Jacques did?

A. Yes, sir.

Q. Now, before coming to this country with Jacques, did you live near Jacques and your sister-in-law (sic)?

A. Yes, sir.

Q. Your mother here, and Jacques and Marie right next door?

A. Yes, sir.

Q. And is that the way they lived ever since they have been married?

A. Yes, sir.

Q. How many children did Jacques and your sister Marie have? [101]

A. Two.

Q. What are their ages, please?

A. Girl is 13.

Q. And the boy?

A. About 10 or 11.

Q. I see. Had Jacques ever been married before?

A. Never.

Q. Has your sister married since Jacques' death?

A. Never, no.

The Court: How old is your sister?

The Witness: 44.

The Court: How old was Cardinale?

The Witness: 47.

(Testimony of Horace Adagio.)

Q. (By Mr. Vartan): What did your brother-in-law Jacques do for a living in Algiers?

A. Run a boat; he had his own boat.

Q. He had his own boat. When he came to this country, did he sell his boat? A. No, sir.

Q. He kept it? A. Yes, sir.

Q. Then he intended going back, is that right?

A. Yes, sir.

Q. When he had his own boat, I assume he was also a [102] fisherman? A. Yes, sir.

The Court: How long was he here in the United States before he died?

The Witness: Some time in May.

The Court: That's three years?

The Witness: Yes, sir.

The Court: Any evidence that he sent any money back home?

Mr. Vartan: Yes, we have taken the witness' deposition, Your Honor.

The Court: All right.

Q. (By Mr. Vartan): Did you ever work with your brother-in-law Jacques in Algiers on his boat?

A. No, sir.

Q. I see. What size boat did he operate in Algiers?

A. It is different from here over there. About—smaller than this one.

Q. Let me get at it this way: How many men did he have working for him on his boat when he went fishing? A. Ten men.

(Testimony of Horace Adagio.)

Q. And in the old country, Horace, did they do the same as we do here, work on a share basis?

A. Yes, sir, on share. [103]

Q. And you're familiar with the custom there as it is here, the owner of the boat has more than one share, is that right?

A. Yes, sir.

Q. When you were there living next door to him, did he provide your sister and the children with a good home?

A. He was a good man.

Q. Pardon me?

A. He was a good man.

Q. He was a good man?

A. Yes.

Q. Was he good to his children?

A. Yes, sir.

Q. And good to his wife?

A. With everybody, sir.

Q. Did you ever see your brother-in-law go and take the children to church?

A. Yes, sir.

Q. How often?

A. Every Sunday when he can.

Q. When he wasn't out to sea, is that right?

A. Yes, sir.

Q. How about your brother-in-law's health, so far as you know, was he a good, healthy man?

A. Yes, sir.

Q. And do you ever remember during the times you lived [104] next door to him where he was sick for any length of time?

A. Never.

Q. Can you give us any idea, Horace, as to how much per share or how much the average fisherman earned in Algiers?

(Testimony of Horace Adagio.)

Mr. Nave: I am going to object to that question, if the Court please, as being——

Mr. Vartan: I know it is speculative.

The Court: Ask him if he knows and let him answer. Objection overruled.

Mr. Vartan: Just want to get an idea.

Q. (By Mr. Vartan): What did the fishermen earn in Algiers in the fishing business? How much a month, how much money?

A. It is like here, one week you get a lot of fish——

The Court: When you got a lot of fish you don't get too much money for the fish, right?

The Witness: Yes, sir.

The Court: When you haven't got a lot of fish, you don't make too much because you got no fish to sell; right?

The Witness: Yes, sir.

The Court: Did I understand you to say that for the two months you worked on the Santa Lucia, your total share was \$138?

The Witness: Yes, sir, he give me two checks.

The Court: Two checks; how much? [105]

The Witness: A hundred and twenty, ten and thirty.

The Court: Together, how much?

The Witness: Two hundred and fifty.

The Court: Two fifty? Not a hundred and thirty-eight?

The Witness: No, just one check.

The Court: One check for \$138?

(Testimony of Horace Adagio.)

The Witness: A hundred and thirty-eight; I don't remember now.

The Court: The other check how much?

The Witness: A hundred and ten.

The Court: Okay.

Q. (By Mr. Vartan): The sardine season was very good following the accident, wasn't it?

Mr. Nave: I object to that question, if the Court please.

A. Yes, sir.

The Court: Well, we will leave it. Overruled. There is no evidence as to what is good, you don't ask him that, but just leave it.

Mr. Vartan: It is so hard to pin down, depends on the vessel.

The Court: That's all right.

Mr. Vartan: I think that's all, your [106] Honor. Your Honor has the earning picture.

Cross-Examination

By Mr. Nave:

Q. Mr. Adagio, you have testified that you were not familiar with the engine room on the Santa Lucia at all, you had never been in the engine room?

A. No, sir.

Q. You don't know anything about how you turn the engines on or off, or the motors on or off?

A. No, sir.

Q. Never seen the gasoline tank that was on this fishing boat? A. No, sir.

Q. At no time? A. No.

(Testimony of Horace Adagio.)

Q. You have never done any work on the boat in the way of repairs or painting or anything like that?

A. No, sir.

Q. Were you on the fishing boat when it was being repaired at Monterey before this fishing season?

A. No, sir, nothing was repaired.

Q. Nothing was repaired.

A. It was repaired.

Q. It was repaired?

A. We put just the nets. [107]

Q. Well, do you remember when the Santa Lucia was being painted?

A. No, sir, I wasn't there.

Q. You weren't there. Do you remember when the engines were being worked on and the electricity was being worked on?

A. No, sir.

Q. You weren't on the ship at that time?

A. No, sir.

Q. The only thing you had anything to do with repair was the nets, is that right?

A. Yes, sir.

Q. Now, the morning of this explosion, you had been out to sea fishing, hadn't you?

A. Yes, sir.

Q. What kind of fish did you get that day?

A. Anchovies.

Q. Anchovies?

A. Yes, sir.

Q. When you came back from the anchovy fishing, you went to another wharf, not this one, but another one that was nearby, didn't you?

A. Yes, sir.

Q. Do you remember about what time of day it

(Testimony of Horace Adagio.)

was that you went to the other wharf with the anchovies?

A. It was in the afternoon, about 2:00 o'clock afternoon. [108]

Q. About 2:00 o'clock in the afternoon. You and the crew had caught some anchovies that morning, you had anchovies did you?

A. On the boat, yes, sir, we catch them.

Q. You unloaded the anchovies at the other dock? A. Yes, sir.

Q. That's right. And then after unloading the anchovies—about 2:00 o'clock in the afternoon, is that right?

A. Then we get in 2:00 o'clock in the afternoon.

Q. Yes.

A. After we unload the fish it was about 3:45 o'clock.

Q. Then you left the other dock in the Santa Lucia? A. Yes, sir.

Q. And the ship went out to sea again, didn't it?

A. Yes, sir.

Q. Do you know why it went out to sea, what it was doing out there after it took the anchovies off?

A. Yes, sir.

Q. What was it doing?

A. Just clean up the boat.

Q. Clean up the boat? A. Yes, sir.

Q. And then while it was out at sea you could hear the main engine going, the main engine make noise? A. Yes, sir. [109]

Q. Did you notice it when it was on, could you

(Testimony of Horace Adagio.)

tell it was making a noise? A. Yes, sir.

Q. Then it came back to the Union Oil dock, is that right? A. Yes, sir.

Q. About what time was it when it came back to the Union Oil dock?

A. How can I tell you; 30 minutes after, maybe more.

Q. Around 6:00 o'clock? 5:30, 6:00 o'clock?

A. 5:30, 6:00 o'clock, yes, somewhere.

Q. Somewhere. All right. Where were you when the fishing boat Santa Lucia pulled into the dock, where were you standing when it came into the dock? Do you know what I mean? A. No, sir.

Mr. Nave: May I have that photograph, please?

Q. (By Mr. Nave): As the fishing boat came into the Union Oil dock to make gasoline——

A. Yes, sir.

Q. ——where you were you on the boat then?

A. Right here (indicating).

Q. You were standing on the stern, the right-hand side?

A. Yes, behind what you call, you know, the little boat, the little boat—— [110]

Q. The skiff?

A. No, no, not the skiff, it was—I mean, behind the—what you call that?

Q. Behind the galley? A. Yes.

Q. Behind the galley.

A. On the right side.

Q. On the right-hand side? A. Yes.

Q. What were you doing there?

(Testimony of Horace Adagio.)

A. Like all crewmen, you know, we try to, you know, some of the men tied up the boat, and some men, we clean up the boat, the brail, we got a big brail, sardines was inside.

Q. Did you help to tie the boat up?

A. No, sir.

Q. What were you doing when the fishing boat came into the——

A. I was holding the brail.

Q. Holding up what?

Mr. Vartan: He said it, the brail.

Mr. Nave: The brail. All right.

Q. (By Mr. Nave): Did you notice what Mr. Cardinale, the skipper, did when the Santa Lucia came into the Union Oil dock?

A. No, sir.

Q. Did you see him at any time before that explosion? [111]

A. No, sir.

Q. With the gasoline hose?

A. No, sir.

Q. You didn't see him at all?

A. No, sir.

Q. Did you hear the conversation between the skipper, Mr. Cardinale, and a man up on the top of the Union Oil dock?

A. No, sir.

Q. You didn't hear him say anything to the Union Oil man or Union Oil man say anything to him?

A. No, sir.

Q. No conversation?

A. No conversation.

Q. All right. Do you know how long you had been tied up at the dock before this explosion took place?

A. I can't tell how long.

Q. Ten minutes? Something like that?

A. Ten minutes.

Q. Around ten minutes, would you say?

(Testimony of Horace Adagio.)

A. Well, ten minutes—I can't tell you exactly, because I don't work with a watch, not the crewmen.

Q. But around ten minutes, is that about right?

A. Yes, I think so.

Q. Did you smell any gasoline at any time during that ten minutes that you were at the dock before the explosion? [112]

A. No, sir.

Q. Did you see any gasoline leaking any place?

A. No, sir.

Q. Did you see any gasoline leaking down from the timbers on the dock?

A. No, sir.

Q. Did you see any gasoline spilled on the fishing boat before the explosion?

A. No, sir.

Q. You had started to go into the galley just before the explosion, is that right?

A. No, kitchen?

Q. Kitchen?

A. No, I don't get in the kitchen, I just stand up on the rail, I was holding it.

Q. I see. What way were you facing, what way were you standing when the explosion took place?

A. I have to show you again.

Q. All right.

A. (Indicating). It was the bar.

Q. Well, this is the dock, this is the gasoline dock here. Now, which way were you facing, facing towards the dock or facing the opposite side?

A. I tried to explain to you. This is the dock.

Q. This is the dock? [113]

Mr. Vartan: Excuse me. Why don't you show

(Testimony of Horace Adagio.)

him the diagram; "this" and "that" won't mean anything.

Mr. Nave: All right, I think that is a good suggestion.

Q. (By Mr. Nave): You see this sketch here that shows the Santa Lucia? A. Yes.

Q. That represents the fishing boat.

A. Yes, sir.

Q. And this represents where the gasoline was on the dock. A. Yes, sir.

The Court: Is that a sketch that has been marked in evidence yet?

Mr. Vartan: Not yet, your Honor.

The Court: Don't you think you should put it in evidence?

Mr. Vartan: Yes, your Honor.

The Court: Do you want it in evidence?

Mr. Vartan: Yes, we offer it in evidence.

The Court: Any objection?

Mr. Nave: For illustrative purposes we have no objection. I will call your attention that we do contend that the position of the tug Avila as shown on the sketch is not correct, that it actually was back some distance towards this other offset, but as being representative of the general [114] situation as to the fishing boat and the dock——

The Court: With that understanding then, it is received in evidence as Libelant's Exhibit——

The Clerk: 2 your Honor.

The Court: ——2.

(Testimony of Horace Adagio.)

(The sketch of the fishing boat Santa Lucia was marked Libelant's Exhibit No. 2 in evidence.)

Q. (By Mr. Nave): Now, referring to Plaintiff's Exhibit 2, the Santa Lucia is represented there as the fishing boat? A. Yes.

Q. And you understand this is the service station dock here? A. Yes, sir.

Q. All right. Now, as I understand it, you were on this side of the Santa Lucia, is that right?

A. Yes, sir.

Q. On the opposite side.

A. This is the bar here, the net is here, and the crewmen are here. I was on the right side here.

Q. Just mark with an X with a pencil where you were standing.

A. Yes, sir, I stand the right side, right here.

The Court: Put a little X there and put your initials there.

Mr. Nave: I may draw a line out with a [115] circle, your Honor, so we can see it. And just put your initials right there, if you will, please, just initial this at the end of the mark.

The Witness: What is initial?

The Court: Letter, name.

(Witness writing.)

Q. (By Mr. Nave): Now, you were in a position marked on the exhibit here, at this point?

A. Yes, sir.

(Testimony of Horace Adagio.)

Q. What way were you facing when the explosion took place? A. Facing the front.

Q. Were you facing this direction (indicating)?
A. No.

Q. Were you facing——

The Court: Indicating the stem of the ship.

Mr. Nave: The stern of the ship?

The Court: Stem.

Mr. Nave: Stem, the after part.

The Court: The fore part.

Q. (By Mr. Nave): And you felt an explosion, didn't you? A. I beg your pardon?

Q. Do you know what an explosion is?

A. Yes. [116]

Q. Did you feel an explosion at that time?

A. I just heard the big boom, that's all.

Q. You heard a big boom? A. That's right.

Q. You heard one big boom, is that right?

A. Right.

Q. Or was there more than one big boom?

A. That's what I heard, boom, and I was on my knee, that is all I can tell you.

Q. As a matter of fact you did hear just one big boom, didn't you? A. Yes, sir.

Q. That's true, isn't it? A. Yes.

Q. Just one big boom? A. One big one.

Q. And that knocked you down on your knees, didn't it? A. Yes, sir.

Q. Did you fall forward the way you were facing toward the front of the boat? A. Yes, sir.

Q. You fell down on both knees?

(Testimony of Horace Adagio.)

A. Both knees.

Q. Then as I understand it, you were then turned around? A. Yes, sir. [117]

Q. To your right? A. Yes, sir.

Q. You turned around completely so you then were facing the stern or the back part of the fishing boat?

A. I was like that and I was exactly like this, that is all I can tell you (indicating).

Q. Fine, thank you. Now, you didn't see any fire any place before this one explosion you heard, did you? A. No, sir.

Q. There was no fire that you saw either on the ship or on the dock before this big boom?

A. No, sir.

Q. Then you got up from your knees and you helped somebody to a skiff, didn't you?

A. Yes, sir, Mr. Tarantino.

Q. Mr. Tarantino? A. Yes, sir.

Q. Where did you find Mr. Tarantino? Where was he, Mr. Tarantino, when you found him?

A. When I got up he was just in front of me, about like that. He had blood on his face.

Q. Was he on the same side?

A. Just right here; I was here and he was in front of me.

Q. He was in front?

A. In front of me. [118]

Q. You assisted him into the skiff?

A. Yes, sir.

(Testimony of Horace Adagio.)

Q. Then what did you do next after you helped Mr. Tarantino into the skiff?

A. I helped Salmeri (indicating).

Mr. Vartan: Pointing to the man who just testified.

Q. (By Mr. Nave): Mr. Salmeri?

A. Yes, sir.

Q. Where was Mr. Salmeri when you assisted him, where did you find him?

A. He was behind Mr. Tarantino, flat, crying for his arm.

Q. Was he lying down? A. Yes, sir.

Q. He was holding his arm? A. Yes, sir.

Q. Then you assisted him into the skiff?

A. Yes, sir.

Q. All right. Now, the first fire that you ever saw was several minutes after this boom, this explosion, wasn't it?

A. When I bring Mr. Tarantino, I have to turn back to pick him up, that is when I saw the fire.

Q. After you put Mr. Tarantino in the skiff?

A. In the skiff.

Q. And you came back? [119]

A. I came back to pick up Salmeri, first time I saw the fire.

Q. Where did you see the fire, the first time you saw the fire, where was it?

A. On the dock and on the water.

Q. And on the water? A. On the water.

Mr. Nave: Pardon me, one moment, your Honor.

(Testimony of Horace Adagio.)

The Court: Want your recess now? Want an afternoon recess?

Mr. Nave: Thank you.

The Court: We will take our recess.

(Short recess.)

Q. (By Mr. Nave): I hand you a photograph which I will ask be marked for identification.

The Clerk: Respondents' Exhibit B marked for identification.

(Whereupon the above photograph was marked Respondents' Exhibit B for identification only.)

Q. (By Mr. Nave): I will ask you to look at that photograph now; that photograph represents the pilings of the wharf and the water lying below it; you understand? A. Yes, sir. [120]

Q. Now, the Santa Lucia was up against this—these pilings when this explosion occurred. You understand that? A. I can't see what—

Q. This was taken after the—

A. I understand, but I can't explain it.

Q. All right. Now, the fire that you saw—

The Court: Has this been marked for identification?

Mr. Nave: Yes, your Honor.

The Court: In evidence, is it?

Mr. Nave: For identification.

Q. (By Mr. Nave): Now, the fire you saw was on the water down at the bottom of these pilings—

(Testimony of Horace Adagio.)

The Court: Counsel, it isn't my practice to permit a witness to be interrogated concerning a photograph which has not been received in evidence.

Mr. Nave: Very well. Any objection to this offer in evidence?

Mr. Vartan: No, your Honor.

Mr. Nave: Then it will be offered in evidence.

Mr. Silvers: This is for the limited purpose of showing the structure of the wharf and the pilings and the water immediately around it at the time of the explosion?

Mr. Nave: This is for the purpose, the immediate purpose, Mr. Silvers, of asking this witness to identify where [121] he saw the fire on the water.

The Court: Let me see if I can straighten it out. Is this a fair representation of that projection of the dock on which the pump was located at or about the time of the explosion?

Mr. Nave: Yes, your Honor.

The Court: Not indicating the height of the water.

Mr. Silvers: Not also indicating any of the structures, of course, on the gas docks. This is a post-accident photograph and a lot of evidence was destroyed, your Honor, by the fire. I just wanted to be sure those limitations were called to the attention of your Honor.

The Court: This is a photograph before?

Mr. Silvers: No, sir. It's a photograph after the——

Mr. Nave: After the explosion.

(Testimony of Horace Adagio.)

The Court: After; how long after?

Mr. Nave: It was taken by an independent photographer, I believe, the following day.

The Court: I see char marks on some of the pilings.

Mr. Nave: This is the actual installation, and there are a number of photographs, counsel.

The Court: With that understanding we will receive it in evidence. There is no objection?

Mr. Vartan: No, your Honor. [122]

The Clerk: Respondents' Exhibit B.

The Court: It is a photograph of the dock taken the day after the accident, particularly showing the portion protruding where the pumps were located.

Mr. Vartan: Mr. Clerk, it will be Respondent Union Oil's Exhibit; I think they should be separate.

The Court: Yes; Respondent Union Oil Company's Exhibit.

The Clerk: Respondent Union Oil's Exhibit B introduced and filed into evidence.

(Whereupon, the photograph previously marked Respondent Union Oil Company's Exhibit B for identification was received in evidence.)

Mr. Nave: If I had a thumbtack I believe we could put this up on the board.

Q. (By Mr. Nave): Now, Mr. Adagio, calling your attention to this photograph, Respondent's B,

(Testimony of Horace Adagio.)

Union Oil Company, you say you saw fire, several minutes after the explosion, on the water?

Mr. Vartan: Just a minute. For the record, we object to that question. It assumes something not in evidence. He is saying several minutes. I think the witness did not express it in minutes. He said he saw it when he was helping the second man off the boat, and that's the only time element.

Mr. Nave: Very well. [123]

Refer to the deposition of Mr. Adagio on pages 15, 16 and 17.

Q. (By Mr. Nave): I will ask you, Mr. Adagio, that on the 25th of August if these questions were asked you and to which you gave these answers at the time your deposition was taken in connection with this case:

“Question: Now, did you notice any fire after the explosion; did you see any fire any place?”

To which you answered:

“After the explosion? Yes.”

Then you were asked:

“First let me ask you how long after the explosion did you first see any fire?”

To which you answered:

“Answer: I can't tell you that.

“Question: Was it several minutes?

“Answer: Yes.

“Question: Several minutes, is that right?

“Answer: Yes.”

A. I never said precisely. I said I don't know. Always said I don't know.

(Testimony of Horace Adagio.)

Q. Did you give those answers I just read to you?

A. You said about seven minutes, but I said I don't know. [124]

The Court: Several minutes.

The Witness: Several minutes, but I always said I don't know, I can't tell you.

Q. (By Mr. Nave): You did give those answers I just read to you, didn't you, sir? A. Yes, sir.

Q. All right.

"Question: Where did you first see the fire several minutes after the explosion?"

To which you answered:

"When I take Tarantino off the skiff and I turned to take Joe and then now I see the fire."

A. Yes, sir.

Q. "Question: Where did you see it?"

"Answer: Well, all over."

A. Yes, sir.

Q. "Question: All over?"

"Answer: All over, on the deck, on the water, also the water."

A. I don't mean on the deck; on the dock that time.

Q. It says deck here, but you meant dock?

A. I meant dock.

"Question: On the deck and on the water?"

To which you answered: "Yes." [125]

A. Yes.

Mr. Vartan: There are two more questions.

(Testimony of Horace Adagio.)

Mr. Nave: I am going to continue. I am leaving out the statement of counsel in here.

Mr. Vartan: There are two more questions following where you stopped.

Mr. Nave: I am going to read them.

Mr. Vartan: Okay.

Q. (By Mr. Nave): "Question (By Mr. Nave):"—

I will read the whole thing, Mr. Silvers.

"Mr. Silvers: Deck or dock?

"The Witness: Dock, you know, what you call wharf.

"Question (By Mr. Nave): On the wharf?

"Answer: Yes.

"Question: You saw it on the water and on the wharf?

"Answer: Yes."

A. That is right.

Q. "Question: Where in the water did you see it?

"Answer: Well, just the wharf is like that, then the water in the boat, you know, front of the boat, so all over like that." [126]

A. Yes, sir.

Q. "Question: On the side of the boat in the water?

"Answer: Yes. The boat and the wharf, all over."

You answered those questions in that way, did you?

A. Yes, sir, I mean, I wanted it to mean on the

(Testimony of Horace Adagio.)

front of the boat and I always said on the dock and the front of the boat, just like that, all around (indicating).

Q. "Question: All around the boat?"

"Answer: No, just like that.

"Question: One side?"

"Answer: One side."

A. Yes, sir.

Q. "Question: The side next to the wharf?"

A. Yes, sir.

"Answer: Yes, sir.

"Question: On the water, and that's where you first—that and the dock you saw fire on?"

"Answer: That's right."

That's correct, isn't it? A. That's correct.

"Question: Could you tell me where you saw the fire on the dock at that time, where it was coming from? [127]

"Answer: I don't know."

That was your answer? A. Yes, sir.

Q. That is correct, is it, sir? A. Yes, sir.

Q. "Question: Now, when the big explosion came, you heard it and did you notice then that the boat had blown up?"

To which you answered:

"I don't know."

A. Exactly.

Q. Correct.

"Question: Could you see that the cabin had blown apart at that time?"

(Testimony of Horace Adagio.)

Mr. Silvers: Excuse me, your Honor, the witness is here in court.

The Court: I don't know the purpose of this. The only understanding, the only reason I have permitted this is to show contradictory statements made by a witness on a prior occasion.

Mr. Nave: All right.

Mr. Silvers: I will object to any further reading.

Mr. Nave: I think the objection is well taken.

Q. (By Mr. Nave): Now, referring again then to this photograph, Respondent's [128] Exhibit B, Union Oil Company, where did you see the fire on the water as you have described it?

A. On the wharf and the water.

Q. Yes.

A. On the wharf, on the dock and the wharf, just like that (indicating) all over.

The Court: On the dock and the water, indicating along the face of the dock.

Mr. Vartan: Yes, your Honor.

The Court: Along the piling running from the water to the flooring of the dock.

Mr. Vartan: Yes, your Honor.

Q. (By Mr. Nave): That is correct, the surface of the water to the face, the side of the dock, is that what you mean? A. Yes, sir.

Q. That whole thing was on fire?

A. Yes, sir.

Q. When you saw it several minutes after the explosion?

A. I don't know the minutes; I saw it that way.

(Testimony of Horace Adagio.)

Q. Now, did you notice whether or not the cabin of the fishing boat had been blown off at that time? A. I can't tell you that.

Q. You didn't look to see?

A. I didn't have time to look, just heard a boom and then [129] I am so, and when I get up——

Q. Before you took Mr. Tarantino over to the skiff, he was the first one you helped to the skiff, is that right? A. Yes.

Q. Did you notice whether or not the fishing boat was sinking at that time?

A. I beg your pardon?

Q. Was the fishing boat sinking before you took Mr. Tarantino to the skiff?

A. No, sir, it was after the boat, the bottom of the boat, I don't know what you call it, the back part was like that. (Indicating.)

Q. Part of the boat was up in the air?

A. Like that, it was at the time, it was like that.

Q. Like that (indicating). You mean it was level at that time? A. Yes.

Q. When you took Mr. Tarantino off?

A. Yes, sir.

Q. When you returned, what was the condition of the—— A. Same condition.

Q. Same condition?

A. The same condition.

Q. Still level. It wasn't down in the front or down in the back? [130] A. No, sir.

Q. Still level? A. Still.

(Testimony of Horace Adagio.)

Q. You didn't know whether or not there was any damage to the deck or the superstructure?

A. I didn't know.

Q. You didn't pay any attention?

A. Didn't pay attention, no.

Mr. Nave: I believe those are all the questions I have.

Cross-Examination

Mr. Silvers: We would like to offer these two photographs at this time, your Honor, in evidence, as photographs of portions of the gasoline dock area taken after the explosion, again, I believe, within a period of one day.

The Court: Any objection?

Mr. Vartan: No objection.

The Court: Received in evidence by consent.

The Clerk: That is Respondent Cardinale's Exhibits C and D introduced and filed into evidence.

(Whereupon, the two photographs were marked Respondent Cardinale's Exhibits C and D and received in evidence.)

By Mr. Silvers:

Q. Would you take a look at these two photographs that [131] I am showing you, Mr. Adagio. They are meant to portray the side, as you look at the photograph, the side of the gas dock to which the fishing boat, the Santa Lucia, came alongside when it was tied up.

A. The end of the wharf was this one?

(Testimony of Horace Adagio.)

Q. The fishing boat was tied up in the manner that I am indicating.

The Court: On the side of the piling.

Q. Along the side of the piling.

The Court: Shown on Exhibit No.—

Mr. Silvers: Shown on Exhibit No. C, Cardinale Exhibit No. C in evidence.

Q. (By Mr. Silvers): The fishing boat, the Santa Lucia, was tied up in this manner along the side of the pilings; do you understand that?

A. Yes.

The Court: Is that correct, is that where the ship was tied up? Look at the photograph.

The Witness: Yes, it was here.

The Court: He said "Yes," indicating with his hands the side of the piling on the dock extension.

Q. (By Mr. Silvers): The bow of the Santa Lucia would be toward the right side of the photograph and the stern of the Santa Lucia would [132] be toward the left side of the photograph; right?

A. Yes, sir.

Q. What is this (indicating)?

A. That is a tank.

Q. This is one of the tanks on top of the dock?

A. So if this is a tank, the boat was like that (indicating).

Q. With the bow on the right side of the photograph? A. Yes.

The Court: Indicating with the port side up against the piling of the dock shown on this photograph, Cardinale's Exhibit C.

(Testimony of Horace Adagio.)

Q. (By Mr. Silvers): Referring to Cardinale's Exhibit D in evidence, I want you to understand that this, and check it if you will, against Exhibit C, is meant to show a portion of the same area towards the center of the pilings on the side where the ship was tied up. Do you see this object on the wharf I am pointing to in Cardinale's Exhibit C?

A. Yes, sir.

Q. That is meant to be this object shown on Cardinale D, top and center of the photograph, is that clear?

These pilings are pilings on the same face that is shown on Cardinale's Exhibit——

A. This is the same? [133]

Q. Yes. Is this clear to you? A. Yes.

Q. Keep those before you a moment. I want to ask you this: When you first saw the fire, as I have understood your testimony, you said you saw it both on the dock or wharf and on the water, is that right?

A. When I turned my face, when I turn on my face like that (indicating), the first thing I saw was the fire on the dock to the water, just like that, flash!

The Court: You are indicating from the dock in a down direction, in the direction of the surface of the water.

Mr. Silvers: Yes, that is the point I was trying to get to.

Q. (By Mr. Silvers): As you looked at it, the fire appeared to come down from the dock toward the water and the Santa Lucia, is that correct?

A. Yes, sir.

(Testimony of Horace Adagio.)

Q. And the fire on the water, was that, when you first saw it, also visible under the dock inside the pilings that are shown on Exhibits C and D in evidence?

You understand my question?

A. I understand. Yes, sir. When the fire come, it was just like that under this pile, which you call the pile——

The Court: Underneath the pilings? [134]

The Witness: Yes.

Q. (By Mr. Silvers): In other words, the fire you saw on the water was fire underneath the dock, is that correct? There was fire on the water underneath the dock and in back of these pilings; correct?

A. Correct.

Q. That is correct, isn't it? A. Yes, sir.

Q. And the fire appeared to be moving both from the dock on top and from the water below underneath the dock toward the boat Santa Lucia?

A. Yes, sir.

Q. Now, you have told us that you didn't smell any gas before this explosion. Isn't it also true, Mr. Adagio, in this case, first, that you were working with the brail with the anchovies and their heads that you were knocking out? A. Yes, sir.

Q. You had taken on many tons of anchovies that you had just discharged, right?

A. Yes, sir.

Q. And the strongest odor, the odor all around you, was the odor of anchovies, fish, right? This was the smell that you could smell, the fish smell?

(Testimony of Horace Adagio.)

A. Yes, sir. [135]

Q. Your hands and your—

The Court: All over.

The Witness: All over my face.

Q. (By Mr. Silvers): Fish smell.

A. Fish smell, yes, sir.

Q. You were concentrating before this boom was heard on the work that you were doing with the brail, isn't that correct?

A. No, I was standing up.

Q. You were standing up?

A. Standing up and I have nothing in my hands at that time.

Q. Oh, I see, you were standing up, and as I understood your testimony, you were facing the forward part of the boat?

A. Yes, sir.

Q. Is that correct?

A. Correct.

Q. And you were on the, if I have understood you correctly, on the port side, or what you call the right-hand side of the boat, but you were in back, to the rear, to the stern of the deckhouse, is that correct?

A. Correct.

Mr. Vartan: I think he said port instead of starboard. [136]

Mr. Silvers: I am sorry. I meant the starboard side. Thank you.

Q. (By Mr. Silvers): You were standing to the right or starboard side of the boat, but you were standing also to the rear?

A. Yes, sir.

Q. Of the deckhouse?

A. Correct.

Q. So that from your left arm running toward

(Testimony of Horace Adagio.)

the wharf and the pilings, there was just the open deck; right? A. Yes, sir.

Q. And it was from that direction that you felt this explosive force? A. Yes, sir.

Q. And it turned you around, as you told us, in this manner (indicating), so that you faced the after end of the boat, is that correct, down on your knees?

A. Yes, but that side, you know, my front was back after I get up.

Q. Instead of facing forward you were facing to the rear or the after end of the boat?

A. Correct.

Q. Right. But you were placed in that position by an explosion that came from your left side, isn't that correct?

Mr. Vartan: I am going to object, Your Honor, [137] please——

Mr. Silvers: Withdraw the question.

Q. (By Mr. Silvers): It is a fact, however, that you were turned from the position that you were in facing forward standing in back or at the deckhouse, you were turned in this manner (indicating), isn't that correct? A. Correct; yes, sir.

Q. And you were turned in that manner by the force that came from your left side?

Mr. Vartan: Object to that, Your Honor——

The Court: Let the record show that will be a half turn to the rear.

Mr. Silvers: A half turn to the rear to the man's right.

The Court: Yes.

(Testimony of Horace Adagio.)

Q. (By Mr. Silvers): The very first time you observed fire aboard the Santa Lucia was after the skiff, into which all the men, including yourself, had gone, had pulled away from the Santa Lucia, isn't that correct? It was not until the skiff had pulled away from the Santa Lucia that you saw fire on the Santa Lucia? A. Correct; yes, sir.

Mr. Silvers: I have no further questions.

The Court: You have no redirect, have you? [138]

Mr. Vartan: No, Your Honor.

The Court: That is all for this witness. Thank you, sir.

(Witness excused.)

The Court: Any other witnesses here?

Mr. Vartan: No, Your Honor.

The Court: Do you wish to produce any depositions in evidence?

Mr. Silvers: I have this in mind, in view of Your Honor's remarks before we began, I think that Mr. Nave and myself may have objections to certain portions of the depositions which should be brought to Your Honor's attention at the time they are being offered, and we have no objection to them being offered and Your Honor reading them, but we would like to reserve any objections.

The Court: If you have any specific objections to any of the questions propounded to the witness, you may state them tomorrow, and I will rule upon them.

Mr. Silvers: Thank you.

The Court: May I call to your attention that this is a suit in Admiralty and the rules of evidence in Admiralty are very, very liberally applied and not bound by any common law rules of evidence.

Mr. Vartan: Do we have the original deposition of Francois Cardinale there? [139]

The Clerk: Yes, the Court has that one.

Mr. Vartan: Very well, I won't need it.

The Court: You offer it in evidence?

Mr. Vartan: Yes, Your Honor.

The Clerk: Libelant's Exhibit 3 introduced and filed into evidence.

(Whereupon the deposition of Francois Cardinale was marked Libelant's Exhibit No. 3 and received in evidence.)

The Court: I take it, then, there is no objection to the regularity of the taking of these depositions and counsel reserves to themselves the right to make specific objections tomorrow morning at the opening of court to specific questions embodied in this deposition; otherwise there was no objection.

Mr. Silvers: That is correct, Your Honor.

Mr. Vartan: May I be sure, Your Honor, that the original has the——

The Court: Yes, it has the exhibits attached to it, exhibits attached, and also deemed to be received in evidence as part of this Libelant's Exhibit No. 3.

Mr. Vartan: One observation, Your Honor, so that we don't have the record in error, the exhibit

that is attached is similar to the large diagram on a smaller scale——

The Court: The Court has observed that.

Mr. Vartan: Yes. And the vessel Avila that is on the exhibit attached to the deposition is much farther away [140] from the Santa Lucia. There may be a dispute on that and Your Honor can, of course, rule on that.

The Court: It is farther to the south and more inland.

Mr. Vartan: That's right. There will be a conflict of evidence.

The Court: I have observed that.

Mr. Vartan: So we don't want to waive that observation by offering the deposition.

And for the record I state, as an officer of the Court, that Francois Cardinale, the reason the deposition was taken, Your Honor, one of the Libelants, he was leaving for Algiers and he is now presently in Algiers and that's the basis of offering the deposition.

Mr. Whelan says he is in France. Anyway, he is not here.

Now, we were going to give Your Honor a memorandum which was filed in the exception to the wage and cure actions, or maintenance and cure actions. Those are the ones—there are two copies there, Your Honor, and they happen to be in one of the other cases. At any rate, the same memos are filed in each case and, counsel, I believe you have counter authorities, maybe you want to leave them with the Court, too.

Mr. Nave: There was a written memorandum filed in the four wage cases, as I understand it. [141]

Mr. Whelan: That is right, but the Judge this morning asked for extra copies and I am supplying the extra copies, that was all. You have copies of our memorandum.

The Court: Supposing then I read this deposition overnight. You have no oral testimony to present now, I take it?

Mr. Vartan: No, Your Honor.

The Court: You ask then for an adjournment until tomorrow morning?

Mr. Vartan: Yes, Your Honor.

The Court: We will adjourn, then, until 10:00 o'clock tomorrow morning. If counsel can come in chambers, I would appreciate it. Just for a few minutes.

(Whereupon, this matter was adjourned until the hour of 10:00 o'clock a.m., Wednesday, September 4, 1957.) [142]

September 4, 1957—10:00 A.M.

The Clerk: Salmeri, et al. versus Cardinale, et al., further trial.

Mr. Vartan: Ready.

Mr. Nave: Ready.

Mr. Silvers: Ready.

The Court: All right, you may proceed.

Mr. Vartan: Mr. Garrett Ray.

GARRETT RAY

called as a witness by and on behalf of the Libelants, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court, sir.

The Witness: Garrett Ray.

Direct Examination

By Mr. Vartan:

Q. Garrett Ray, what is your age, please?

A. 29.

Q. Are you a married man? A. Yes, sir.

Q. Family? A. Yes, sir.

Q. How many children?

A. Two boys. [143]

Q. At the present time where do you reside?

A. At Venice, California.

Q. Venice, California. Now, what is your business or occupation at the present time?

A. I am a journeyman carpenter.

Q. Prior to that occupation what was your occupation? A. Merchant mariner.

Q. How long did you go to sea in all?

A. Around 11 years.

Q. On September 28, 1954, by whom were you employed? A. Union Oil.

Q. And were you attached to a vessel?

A. Yes, sir.

Q. What was the name of that vessel?

A. The Lompoc.

(Testimony of Garrett Ray.)

Q. That's L-o-m-p-o-c? A. Yes, sir.

Q. For the record what type of vessel was that?

A. Well, that was a T-2 type tanker.

Q. How long in all were you attached to that vessel?

A. About a year and five days.

Q. What was your capacity with the vessel?

A. I was an A.B. maintenance man.

Q. Now, Mr. Ray, directing your attention to September 28, 1954, did you work that day?

A. Yes, sir.

Q. And about what time did you finish work?

A. Around 4:30, twenty minutes of five.

Q. That would be in the afternoon?

A. Yes, sir.

Q. Will you tell us briefly what you did when you finished work?

A. Well, I grabbed something to eat and then I went down fishing down off the tugboat.

Q. About what time was it that you started fishing from the tugboat?

A. Oh, five o'clock, a little after.

Q. And the tugboat that you were fishing from was the tugboat Avila? A. Yes, sir.

Q. Now, I direct your attention to the diagram, I think it is Libelant's Exhibit 2, and it generally shows an outline of the Union Oil wharf at Avila, it shows an offset, I am pointing here where there was a gas dock, and the portion below the offset is an enlargement of the same area. Then on the diagram is what purports to be the tugboat Avila with

(Testimony of Garrett Ray.)

its size, 31 by 11 marked underneath it. Is that the vessel you were fishing from? A. Yes, sir.

Q. Now, when you were on the tugboat Avila did you notice [145] a fishing vessel by the name of Santa Lucia come into the harbor?

A. Yes, sir.

Q. Did you observe the fishing boat tie up?

A. Yes.

Q. Where did it tie up?

A. Tied up to the middle gas dock right there.

Q. Now, after the Santa Lucia tied up, Mr. Ray, will you describe its position with reference to the Avila insofar as the way they were pointed or headed?

A. Well, the Avila was tied up with its starboard side to the dock and the fishing boat was port side to and they were stern to stern.

Q. After it tied up—before I ask you that, during all the time we are going to talk about here, the Avila was tied up, too, in other words it wasn't a moving vessel? A. No, it was tied up.

Q. When the Santa Lucia tied up, to make it clear, the stern of the Santa Lucia was to the stern of the Avila, is that right? A. Yes, sir.

Q. Approximately how many feet separated the sterns of these vessels?

A. About forty feet.

Q. Now, what portion of the Avila were you fishing from? [146]

A. Well, mainly from the stern of the Avila.

(Testimony of Garrett Ray.)

Q. How were you dressed that afternoon when you were fishing?

A. Well, rather a warm day, all I had on, well, work pants, khakis or Levis, I don't remember, but a T-shirt.

Q. A T-shirt; you say it was a warm day?

A. Yes, sir.

Q. Was there any wind?

A. No; there wasn't.

Q. Did you observe the Santa Lucia after it tied up? A. Yes, sir.

Q. Did you notice any activity on that vessel?

A. Yes.

Q. Would you tell his Honor what you observed?

A. Well, the first thing I observed they were handing down hoses, they had handed down a fuel hose and water hose and they had taken them to various spots on the boat, and then I watched them clean down their brail nets they had set, had them hanging up on booms and these sailors had scoop nets that they hold up, maybe two feet in diameter, they were knocking the anchovies and things out of the net with.

Q. About how many men in all did you observe on the Santa Lucia at that time?

A. Well, I'd say around 8 or 9.

Q. You didn't count them? [147]

A. No, sir.

Q. Now, you mentioned that you saw hoses handed down. Do you recall the color of those hoses?

(Testimony of Garrett Ray.)

A. Well, from what I recall there was a black one and a red one.

Q. Now, calling your attention to the red hose, did you see anyone from the Santa Lucia take the end of that red hose when it was handed down?

A. Well, I don't remember actually seeing any one person take it. I mean, I couldn't say who it was, but——

Q. I see. Then, I take it, Mr. Ray, you didn't see anyone—you didn't see what was done with the fuel hose?

A. Well, there was two hoses and they were both taken to the port side.

Q. I see. After they were taken to the port side did you notice what was done with the hoses?

A. No; I couldn't see them from where I was.

Q. Mr. Ray, while you were fishing from the stern end of the Avila did you hear any conversation between anyone on the Santa Lucia and anyone—or between that person and someone on the gas dock of the Union Oil Company wharf?

A. Yes, sir.

Q. Will you please state to his Honor what you heard?

A. Well, I heard the fellow from the fishing boat—I can't say who it was—ask up to the dock if he had given him [148] his thirty gallons yet, and the fellow on the dock, I remember, called back, said he had given him fifty or sixty already.

Q. Did you see the gas attendant during that conversation?

A. Yes, sir.

(Testimony of Garrett Ray.)

Q. And where was he?

A. He was on the gas dock—well, just to the—by the big round tanks up there. He was sort of more or less right up toward the rail there.

Q. That would be the edge of the gas dock closest to the Santa Lucia, is that right?

A. Yes, sir.

Q. When you heard that conversation, “Have I got my thirty gallons yet,” and the gas attendant said, “I have given you fifty or sixty gallons already”——

The Court: Did you hear him say, “I have given you fifty,” or did you hear him say, “I have given you sixty”?

The Witness: He had said both of them, sir, said “I have given you fifty or sixty already.”

The Court: That is what you heard him say?

The Witness: Yes, sir.

Q. (By Mr. Vartan): Now, when you heard that conversation did you observe what the gas attendant did?

A. Well, he then immediately took off and started running [149] toward, well, between the long Diesel oil one and that G.M. Diesel there.

Q. And when he was running will you tell his Honor just how many feet you saw him run while he was within your view or vision?

A. Well, I could only see him for about, oh, seven or eight feet, because the dock cut the view off for me.

Q. I see. So you don't know where he ultimately

(Testimony of Garrett Ray.)

ran to? A. No, sir; I don't.

Q. Now, the direction that he ran was, when you mentioned the tanks, that would be from the edge of the dock towards away from the Santa Lucia, is that right? A. Yes, sir.

Q. Did he appear excited? A. Yes, sir.

The Court: What about his actions gave you the impression that he was excited? What did you observe?

The Witness: Well, it seemed like when the fellow, when he told him he had given him fifty or sixty already he immediately after he had said that, he turned around and just taken off right fast, it seemed——

Mr. Nave: That is not responsive to the question.

The Court: We will leave it stand; it is informative. Did you observe anything else except that he ran off fast after he made that statement? [150]

The Witness: No, sir.

The Court: Is that the only observation upon which you base your statement that he appeared to be excited?

The Witness: Yes, sir; that's all.

Q. (By Mr. Vartan): Now, what did you see after you saw the man running, what happened then?

A. Well, then there was this terrific flash and then the explosion and that was——

Q. How long after the flash did the explosion take place?

(Testimony of Garrett Ray.)

A. Well, just about immediately right following it.

Q. Was there any question in your mind but what the flash was first? A. No, sir.

Q. And the explosion was second, is that right?

A. Yes, sir.

Q. Mr. Ray, when you saw this man take off, as you say, and start running, was that prior to your seeing the flash?

A. That was before the flash, yes, sir.

Q. That was before the flash. Can you give us any idea of what area the flash that you observed covered, I mean, how many feet, if you can?

A. Well, I'd say it was at least 15 feet high and covered, oh, a pretty good area.

Q. Now, having in mind the relation of the boat and the [151] gas dock, where was the location of the flash that you observed?

A. Well, it came from the port side of the fishing boat, the side nearest the dock and from the dock and in that vicinity there. I can't—

Q. Could you say what portion of the flash that you saw was in the area of the dock itself?

A. No, sir; I couldn't; just from the dock and port side of the boat.

Q. In other words, the flash was only on the port side of the boat? A. Yes, sir.

Q. What portion of the dock did the flash cover? I realize this is probably difficult. If you don't know, say so. A. I don't know.

Q. All right. What color was this flash, Mr. Ray?

(Testimony of Garrett Ray.)

A. Well, it was orange in color.

Q. Can you tell us how many or how much time elapsed from this conversation that you heard between the gas attendant and somebody on the boat on the Santa Lucia, how much time elapsed from that conversation to the time you saw the flash?

A. Well, just a matter of seconds, a couple of seconds.

Q. What did you do?

Mr. Nave: Pardon me. I didn't understand that. May I have that last answer read?

(Record read by the Reporter.) [152]

Q. (By Mr. Vartan): What did you do then when the flash and the explosion took place?

A. Well, I had been on the stern of the Avila and I more or less got a little push from it and also took over myself and went off the port side of the tug-boat into the water.

Q. What did you do then after you were in the water?

A. Well, I no sooner hit the water when I came right out again.

The Court: Were you thrown off the tug by the explosion, or did you jump?

The Witness: Well, I more or less jumped. I could feel a concussion, too, but I jumped off the port side.

Q. (By Mr. Vartan): And then after, you say immediately after you hit the water you came out?

A. Yes, sir; I didn't stay in at all, hardly.

(Testimony of Garrett Ray.)

Q. Then when you came out which end of the Avila did you come to?

A. Well, I came out the port side just about where I went over, toward the bow.

Q. I see. Then where did you go?

A. Then I headed for the ladder. I came around the after end of the house and started to head for the ladder and these other two fellows were ahead of me. [153]

Q. Did you observe when you came out of the water onto the stern of the Avila and headed for the ladder, did you, at that time, observe the Santa Lucia? A. Yes, sir.

Q. And what activity did you see there at that time?

A. Well, then I saw the fishermen were heading for the stern of the fishing boat. They had a dory tied up there and they were headed for that to get away.

Q. At that time when you saw these fishermen headed for the dory, did you observe any fire or flames on the fishing vessel Santa Lucia?

A. No, sir.

Q. Did you observe any flame or fire in the area of the dock? A. Yes, sir.

Q. At that time. And where was the fire, please?

A. Well, it was located on the face of this gas dock up here around the tanks, right up here, these tanks on the left, and also on the base of the pilings, or on the pilings nearest to the dock.

Q. You say at the base of the tanks; you are re-

(Testimony of Garrett Ray.)

ferring to these tanks that are designated in the diagram, Libelant's Exhibit No. 2 as G.M. Diesel and 76 gasoline? A. Yes, sir.

Q. Is that the area that you saw the flames? [154]

A. Yes, and up toward the rail up there in the front, up in through there (indicating).

Q. The edge where I am pointing?

A. Yes.

Q. That would be the edge of the dock closest to the Santa Lucia? A. Yes, sir.

Q. Did you observe any flames coming at the top of the tanks, Mr. Ray?

A. No, sir; I don't remember any coming up toward the top.

Q. Now, you said something about seeing flames on the pilings. Will you please explain that more carefully?

A. Well, it looked like it had more or less—it was burning on the dock itself and then was coming through the dock and down through the pilings.

Q. Underneath the dock? A. Yes, sir.

Q. All right. Can you give us your best estimate of the time that elapsed from the flash and explosion to the time you observed the fire on the dock area that you have just described?

A. Well, that was about, I'd say, around thirty seconds.

Q. Then I think you were at the ladder going up and you went up to the wharf itself, is that right?

A. Yes, sir. [155]

Q. Did you subsequently reach the level, the

(Testimony of Garrett Ray.)

floor level of the wharf? A. Yes, sir.

Q. At that time did you observe the gas attendant?

A. Yes, sir; he was running down the dock.

Q. I see. And did you have any conversation with him? A. Yes.

Q. Will you please state what that conversation was?

A. Well, he ran down and the three of us were up there; I was the last one to get up, and we had asked him if there was anything we can do, anything to help these fellows that were on the boat, and he stated that everything was going to blow up; that it was burning, and that he thought that the fishermen were all dead, and to get out of there.

Q. Now, you mentioned "when the three of us," I neglected to ask you, when you were fishing on the Avila were there any of your shipmates also fishing? A. Yes, sir.

Q. What portion of the Avila were they fishing from?

A. Well, they were fishing about, just aft of the house, and they were facing the dock on the star-board side.

Q. About how many feet away from you were they? A. Oh, around, I'd say, ten feet.

Q. I see. Now, you say you had been to sea for eleven years, Mr. Ray. During at least a portion of that time you [156] were attached to tankers, is that right? A. Yes, sir.

Q. And other vessels of that nature. Were you

(Testimony of Garrett Ray.)

familiar with grounding cables? A. Yes, sir.

Q. When you saw these hoses passed down to the Santa Lucia, did you observe any grounding cable passed down by the gas attendant?

Mr. Nave: Just a moment, if your Honor please. I object to that line of inquiry, no showing that this man is an expert in that matter, or had any occasion to——

The Court: Well, he can tell us what he observed. He worked on tankers for ten years, but I think the question is objectionable as leading and suggestive.

What else did you see, if anything, happen at or about the time of the passing down of this red hose and the black hose?

The Witness: Well, that is all I observed they passed down, just those.

The Court: See anything else passed down?

The Witness: No, sir.

The Court: If you wish to qualify him as an expert in the handling of gasoline, you may do so, show his experience.

Q. (By Mr. Vartan): Now, during the time that you were attached to these [157] vessels that you have testified to, did you personally ever handle the grounding cables?

A. Yes, sir; I have hooked them up before.

The Court: What is a grounding cable?

The Witness: Well, you want me to——

Q. (By Mr. Vartan): Yes; explain to his Honor what you mean by grounding cable.

A. Well, it's a cable with more or less a—well,

(Testimony of Garrett Ray.)

like a clamp, has got a screw clamp on it that hooks onto the side of the ship, and from what I have ever got from it is that it is supposed to more or less ground out the ship, I guess, take it, oh, well, just like you ground it out, more or less, I guess, would take the, any knocks or anything away from it, I guess.

The Court: You don't know much about it, do you?

The Witness: Not too much.

The Court: These tankers that you worked on, were they steel tankers?

The Witness: Yes, sir.

The Court: Was this fishing sloop a steel sloop, steel hull?

The Witness: I would say it was wood.

The Court: You didn't even observe whether it was wood or steel, did you? [158]

The Witness: Well, I know it was wood, yes.

The Court: You know it was wood. Have you ever seen these grounding cables used from wood ships?

The Witness: No, sir.

The Court: I see. All right.

Q. (By Mr. Vartan): Mr. Ray—for the record, your Honor, I didn't intend to qualify the man as an expert; he has stated what his duties were on these vessels; I merely wanted to show that he did not see——

The Court: All right.

Mr. Vartan: All right.

(Testimony of Garrett Ray.)

Q. (By Mr. Vartan): Mr. Ray, you say after the man on the vessel said, "Have I got thirty gallons yet," and the gas attendant said, "I have given you fifty or sixty already," you observed the man run towards the rear of the gas dock. Now, at that time, or any subsequent time, did you see the man on the dock with a red fire extinguisher in his hand?

A. No, sir; I didn't.

Mr. Vartan: You may cross-examine.

Cross-Examination

By Mr. Nave:

Q. Mr. Ray, you were a crewman or seaman aboard the [159] Lompoc, is that correct?

A. Yes, sir.

Q. And so that the Court may understand this situation, to clarify it, on the drawing on the blackboard, which is Libelant's Exhibit 2 in Evidence, is shown an outline of the Lompoc?

A. Yes, sir.

Q. The Lompoc is a tanker?

A. Yes, sir.

Q. And you were a crewman on that?

A. Yes, sir.

Q. On that ship. Now, the tug Avila that you have pointed out on the Libelant's Exhibit 2, was it tied up to the wharf?

A. Yes, sir.

Q. And to get from the wharf to the Avila you go down a ladder?

A. Yes, sir.

Q. And the ladder, in other words, was right over the tug Avila?

A. Just about in the center.

(Testimony of Garrett Ray.)

Q. In the center. And now are you of the opinion, do you believe that the Avila was, the stern was about forty feet from the stern of the Santa Lucia?

A. Yes, sir.

Q. Do you know that the ladder you are speaking of is in [160] this area of this offset as shown here on the dock?

A. Yes.

Q. In this position?

Mr. Silvers: Just a minute. I didn't hear the question. Mr. Nave, could you lift your voice a bit?

Mr. Nave: All right.

Q. (By Mr. Nave): Isn't it a fact that the Avila instead of being in the position shown on this sketch, Libelant's Exhibit 2, was actually in this position that I have indicated here with the end of my pencil?

A. That is about where the ladder is, right there where you are pointing.

Q. The ladder, in other words, is in this area. I will ask you to step up to this board, if you will, please, and if you will mark an X or a circle—a circle will be fine—where the ladder was located, and just draw a line out from that.

The Court: Let him write "ladder" alongside of it.

Do you know how to spell ladder? That's it. What have you done, now? Tell us what you have done. Tell us what you have done.

The Witness: I put a circle where I say the ladder was. [161]

(Testimony of Garrett Ray.)

Q. (By Mr. Nave): Now, will you please put your initials "R. G."—

Mr. Silvers: "G. R."

Mr. Nave: "G. R." Thank you, Mr. Silvers.

Q. (By Mr. Nave): So that the position shown on this sketch of the Avila is not correct, is it?

A. Not according to this layout, no, sir.

Q. So the Avila is centered, the center of the Avila was in the position that you gave for the ladder, where the ladder is?

A. The stern was about right there (indicating).

Q. Thank you. Now, the weather on the day of this explosion you have testified was warm?

A. Yes, sir.

Q. And you don't recall the prevailing wind or how much wind there was, do you?

A. Well, there wasn't much at all, if any. It was a real calm day that day.

Q. But you don't recall whether it was three miles or five or less?

A. Well, it couldn't have been more than five.

Q. Couldn't have been more than five. And do you know that the wind was blowing from three to five miles an hour in the direction across the dock?

A. Well, that is something—that has been a long time to [162] remember something like that this long.

Q. You don't recall, in other words?

A. Well, might have at the time, but not now.

Q. All right. How long had you been on the stern of the tugboat Avila fishing, approximately,

(Testimony of Garrett Ray.)

before the Santa Lucia, the fishing boat, came in to the wharf?

A. I imagine around 45 minutes.

Q. About 45 minutes. How many men were there on the tub Avila fishing with you?

A. There was two fellows and myself.

Q. Two other men? A. Yes, sir.

Q. First, who were the other two men?

A. The other was a fellow named Scott; I don't remember his first name; his last name is Scott, and then there was another kid named Mark Jensen.

Q. Where was Mr. Scott on the Avila?

A. Well, Scott and Jensen, as I remember, were both—both of them were on the starboard side of the Avila toward the dockside.

Q. You, yourself, were on the stern?

A. Yes, sir.

Q. Now, when the fishing boat Santa Lucia came into the dock there, did you observe the mooring of the Santa Lucia? A. Yes, sir. [163]

Q. You saw that it was secured by ropes to the dock? A. Yes, sir.

Q. And then at that time you heard this conversation that you mentioned, or was it later? You heard no conversation at that time?

A. No, sir; not at that time.

Q. You didn't hear any conversation between anyone on the Santa Lucia and the man who was on the dock, the oil dock?

A. Not when they tied up, I don't recall any, sir.

(Testimony of Garrett Ray.)

Q. The only conversation you heard was later when you stated Mr. Cardinale asked him if, "I have got my thirty gallons?" A. Yes, sir.

Q. That was some time later?

A. Yes, sir.

Q. All right. Do you know approximately how long it was after the Santa Lucia had tied up that you heard this conversation, Mr. Cardinale or someone, asking about thirty gallons?

A. Well, I would estimate it about eight minutes or more.

Q. Now, from time to time you were watching the fishing boat, were you? A. Yes, sir.

Q. Seeing what was going on over there?

A. I was more or less watching.

Q. And you saw a red hose and a black hose being lowered [164] from the Union Oil dock down to the fishing boat? A. Yes, sir.

Q. And you saw someone take the hoses, did you?

A. Yes, sir.

Q. Did you see what was done with the hoses?

A. Well, no; only except that they went up port side with them. I don't know what they did with them.

Q. Did you observe or notice what was on the end of the hoses in the way of nozzles?

A. No, sir; I didn't.

Q. Did you at any time see anyone on the fishing boat inserting the hose nozzle into any of the tank openings on the deck, on the deck of the fishing boat?

(Testimony of Garrett Ray.)

A. Well, no, sir, I didn't; not on the port side, but it is like I say, it is quite a while ago, to remember some of these things. I thought I remembered something on the—more or less on the starboard side. I thought maybe they had a hose there, but I can't say for sure. It is a long time ago.

Q. You just don't recall? A. No, sir.

Q. Now, did you make an observation before this explosion relative to someone handing a cup of coffee out of the galley of the fishing boat for someone?

A. Yes, sir; someone handed a cup. I can't say what it was, but it was a cup, type of coffee [165] cup.

Q. How long was that before you felt this explosion and you saw a flash?

A. I don't remember.

Q. You couldn't say?

The Court: Can you give us any idea? Was it an hour, half hour, ten minutes, five minutes?

The Witness: It wasn't that long.

The Court: How long would you say it was, as best you recall?

The Witness: Well, I would say maybe four minutes or so after that, four or five minutes. It was while they were scraping the nets down, I know that.

Q. (By Mr. Nave): Mr. Ray, can you tell me——

The Court: Excuse me just a moment. Was it after the hose had been passed down to the ship?

(Testimony of Garrett Ray.)

The Witness: Yes, sir.

The Court: How long would you say after the hose was passed down did you see this coffee, cup of coffee?

The Witness: About four or five minutes, I would say.

Q. (By Mr. Nave): How long was it from the time that you saw the red gasoline hose passed down until you felt the explosion, how much time had passed? [166]

A. Around eight minutes.

Q. Around eight minutes? A. Yes, sir.

Q. Could you hear any conversation going on in the fishing boat at any time before this explosion?

A. Well, I could hear them talking, but I didn't take any interest in what they were saying.

Q. Did you smell any gasoline before this explosion? A. No, sir.

Q. Any unusual odors of any kind in that area before you felt the explosion? A. No, sir.

Q. Now, Mr. Ray, you testified in the other case involving this same accident and explosion some time last year, didn't you, sir?

A. Yes, sir. I don't remember just what it was.

Q. I will ask you at that trial if this question wasn't asked you——

Mr. Vartan: Just a moment, counsel. Don't you think we are entitled to see what you are——

Mr. Nave: Certainly. I assumed you had a copy of the transcript.

Mr. Vartan: No; we do not.

(Testimony of Garrett Ray.)

Mr. Nave: I certainly beg your pardon.

Mr. Vartan: Do you have a copy? [167]

Mr. Silvers: No; I don't.

Mr. Nave: This is in reference to the coffee and the cook in the galley.

Mr. Silvers: Where are you beginning, counsel?

Mr. Nave: Where I have indicated.

Q. (By Mr. Nave): Mr. Ray, I asked you at that time this question and you gave this answer:

“Question: Now, you stated that you noticed someone from the galley that you believe was a cook hand out a cup of coffee to someone?”

“Answer: Yes, sir.”

Is that right? A. Yes, sir; it was.

Q. “Question: Will you just state as near as you can recall what you saw in respect to this cup of coffee?”

To which you answered:

“Answer: Well, he merely just stood by the door by the galley and handed the fellow the coffee.”

You gave that answer to that question, didn't you, sir? A. (Witness nodding.)

“Q. Did you see the person, that is, the entire person, or [168] did you see a hand or an arm or something appear handing the coffee?”

“Answer: The entire person.”

That is correct, isn't it?

A. Yes, sir. Like I say, it is quite a while back, the exact words.

Q. Now, the time element, Mr. Ray, between the arrival of the fishing boat to the explosion was from,

(Testimony of Garrett Ray.)

your opinion, from eight to ten minutes, is that right? A. Yes, sir.

Q. Now, Mr. Ray, you were in a kneeling position, if I understood you correctly, on the stern of the tug Avila when this explosion took place, is that right? A. Yes, sir.

Q. And in that kneeling position were you generally facing towards the stern of the fishing boat Santa Lucia?

A. Just about directly toward it, yes, sir.

Q. You noticed and felt a very severe explosion, didn't you?

A. I didn't say I felt a severe one, no, sir.

Q. Well, you felt an explosion?

A. Yes, I felt it, yes.

Q. You wouldn't say it was severe?

A. Well, I probably don't know the exact meaning of severe.

Q. I see. [169] A. I'm not——

Q. The term violent, was it a violent explosion, would you say that?

A. Well, it was enough that I could feel it, I would say that.

Q. You could feel it. All right. Did you notice that at the time of the flash and explosion that they were just together?

A. Well, I would say that the flash was first and the explosion came, oh, just a matter of a second right after.

Q. They were within a second or less, they almost happened together, didn't they?

(Testimony of Garrett Ray.)

A. Well, just one after the other, yes.

Q. Did you notice at that time, or very shortly after that, that the fishing boat blew up?

A. You mean blew up, the whole thing, or what?

Q. Well, part of it, did you see part of the boat go up in the air, part of the cabin go up and the mast disappear?

A. Well, just almost immediately the mast fell down and the boat went just like that (indicating).

Q. You saw the bridge house collapse with the mast?

A. Yes, sir; the mast was just about—well, stood just about, oh, I'd say, almost on it and the mast came down and the bridge house just collapsed almost immediately. Just happened like that. [170]

Q. At that time, I am speaking now when you saw this flash and heard the explosion and felt an explosion, you saw the mast fall and the bridge of the fishing boat, collapse, didn't you?

A. Yes, sir.

Q. All right. At that time and up to that time you hadn't seen any fire anywhere in that area, had you?

A. No, sir; I hadn't.

Q. No fire discernible to you anyplace?

A. No, sir.

Q. Even when the mast collapsed and the superstructure collapsed on the fishing boat?

A. No, sir; I hadn't saw any.

Q. Saw no fire. Now, you stated, Mr. Ray, if I understood you correctly here, you described the color of this flash as being orange?

(Testimony of Garrett Ray.)

A. Yes, sir; had an orange color to it; yes, sir.

Mr. Nave: I will ask you at page 66——

Mr. Vartan: We don't have a copy, counsel. It is customary, when copies are made of these things that counsel be offered a copy. Now, you got a copy and we haven't got one.

Mr. Nave: This was made at the other trial.

The Court: Now, gentlemen, I like to hear you so friendly in relations, but let's get on with the trial of the case. If you want to look at any of these papers when you [171] cross-examine the witness, you may do so.

Mr. Vartan: Yes, your Honor. What page?

Q. (By Mr. Nave): I asked you this question at the other trial, Mr. Ray, in reference to the flash:

“Question: Now, the flash that you have described, can you describe that in reference to the nature of the flash; did it have a color, was it similar to a bolt of lightning, or an explosion of a bomb or firecracker, how can you describe that, sir?”

To which you answered:

“Yes, sir. I would say it was more on the explosion of a, well, it had a color to it being more or less a light being orange and white through it just like a regular, oh, light flash. Anyway, it didn't last long; it merely just flashed like that.”

That's the correct description of what you saw, Mr. Ray, is that right?

A. (Witness nodding.)

The Court: Is that correct?

(Testimony of Garrett Ray.)

The Witness: Yes, sir. I could have said it. I forgot the white part of it. [172]

Mr. Nave: I didn't mean to interrupt. Is your Honor through asking questions?

The Court: Yes.

Q. (By Mr. Nave): Were you able to pinpoint where you saw that flash? A. Yes, sir.

Q. Where did you see it?

A. Well, I saw it on the port side of the fishing boat and on the side of the dock in that area. I mean exactly where, it is hard to say.

Q. You couldn't say just exactly where it was other than what you have just stated, that it was from the fishing boat, port side, and the dock port side area, is that right? A. Yes, sir.

Q. Now, you saw a man up on the service station dock, I believe you stated he turned and ran?

A. Yes, sir.

Q. How long was that before you saw this flash and heard and felt this explosion?

A. Well, they all happened just about the same time.

Q. A matter of a second?

A. Matter of seconds, yes.

Q. In other words, the man ran about the same time that the flash and explosion?

A. Yes, sir; he got about, I'd say, oh, maybe six feet [173] away, and then this——

Mr. Vartan: Finish "this"——

The Witness: Well, this flash.

Q. (By Mr. Nave): Now, when you came back

(Testimony of Garrett Ray.)

up on the tug from the water, then you went up the ladder, as I understand it, to the dock?

A. Yes, sir.

Q. When was it, or should I say this, first: Where were you when you first noticed any flames in the area?

A. Well, just when I was coming up the side of the tug boat Avila I had to wait to get up the ladder, the other two fellows were before me, and I noticed when—well, when I was at the base of the ladder, oh, more or less waiting to get up the ladder.

Q. If I may ask you this, sir: You were on the stern of the boat Avila and you jumped overboard——

A. The other way.

Q. You jumped over in this direction (indicating on diagram)?

A. Toward the bow.

Q. How long did you remain in the water?

A. Well, just about as soon as I hit I came back up again.

Q. You came back up and climbed back up on the tub Avila?

A. Yes, sir.

Q. Then you went over to the ladder and you were waiting [174] there at the ladder?

A. Yes, but I came up from the bow—you were pointing to the stern—I came up from the bow, around the house and then toward the ladder. In other words, when I came up I was facing the oil dock as I came up, the gasoline dock.

Q. Could you give me your best expression of time from the time that you jumped off the Avila

(Testimony of Garrett Ray.)

until you came over to this ladder and made this observation about fire, how much time had elapsed in that period of time?

A. Oh, I'd say possibly around—well, as close as I can come to it, I'd say maybe ten seconds.

Q. About ten seconds.

A. From what I can remember at this time.

Q. In other words, in ten seconds you went off in the water, climbed back on the tug Avila and went over to that ladder?

A. Yes; I had to wait at the ladder, though.

Q. Wait at the ladder. Then what did you see? You made an observation and saw some fire; what did you see then?

A. Well, I saw the fire, like I say, coming from the base of the gas dock, and then from the rail of it over toward the rail side and down, it is kind of coming down the pilings, not to the water, but the pilings that were supporting the dock.

Q. Now, I call your attention to a photograph, Mr. Ray, that is on the board here, that is marked Respondent's [175] Exhibit B, and if I were to tell you this is a photograph——

A. Yes.

Q. ——of the pilings and the dock of the Union Oil installation, you may assume that is correct?

A. Yes.

Q. Now, you saw fire on these pilings that go from the waterline up to the dock, did you?

A. Yes, sir, but they weren't all the way to the water, no.

Q. Well, where did you see the fire?

(Testimony of Garrett Ray.)

A. Want me to show you?

Q. Yes, sir.

A. Well, it is right in through here (indicating) and it was down on the pilings, it didn't come all the way, and then right underneath the dock, a lot of it, and then on the pilings, but it didn't run all the way to the water.

Q. In other words, it hadn't gotten to the water-line at that time?

A. No, sir; about in through here, came up the pilings out underneath the dock and up through here (indicating).

Q. So that we can identify this, if I am wrong you correct me, your testimony is that you saw fire on the face of these pilings about halfway down from the bottom of the dock to about halfway down the pilings going down toward the water, is that right? [176]

A. Yes; I would say so.

Q. And you saw fire underneath, the flames on the face of the dock that faces the fishing boat?

A. Yes, sir.

Q. That is correct? A. Yes.

Q. That is where you saw this fire?

A. Yes.

Q. Then after you got up—

Mr. Vartan: Just a moment. I hesitate to interrupt, your Honor, but the identification of the site of the fire by Mr. Nave did not cover that the fire was seen in the area of the gas tanks further back.

The Court: You make a note of that and ask him on redirect.

(Testimony of Garrett Ray.)

Mr. Vartan: Very well, your Honor.

Q. (By Mr. Nave): Then you came back up on the dock, you saw the young man whose name is Caldwell, actually, the service station attendant?

A. Yes.

Q. Did you observe at that time whether or not he showed any evidence of being injured?

A. Yes, sir; I could remember seeing what—I remember anyway that he had looked like he was cut on his temple and [177] I remember one other cut, but I don't remember where it was right now.

Q. And his face showed evidence of being burned, didn't it?

A. He showed evidence of being burned.

Q. You saw the face of Mr. Caldwell showed evidence of being burned, didn't it?

A. I don't remember.

Mr. Nave: Page 77 of the transcript of his testimony.

Q. (By Mr. Nave): At the other trial, Mr. Ray, you were asked this question by me:

“Question: Did Mr. Caldwell show any evidence of being burned?”

To which you answered:

“Yes, sir; on the face a little; that is the only part I noticed. I was in quite a bit of shock, and he was, too.”

That is correct, isn't it? Does that refresh your memory? A. Yes, sir.

Q. Mr. Caldwell was in a state of shock at the time you saw him? A. Yes, sir.

(Testimony of Garrett Ray.)

Q. And he showed evidence of being burned in his face? [178] A. Yes, sir.

Q. Now, you had conversation at that time with Mr. Caldwell; just what did you say to him and what did he say to you?

A. Well, as close as I can come to it I asked him if there was anything we could do, in other words, anything to do to help the sailors down there and he told us that the place was, that it was burning and he thought it was going to blow up any minute and that he thought the sailors were all dead and to get out of there.

Q. He told you he thought that everyone is dead, speaking of the fishermen? A. Yes, sir.

Q. And everything was on fire and that it was going to blow up and to get out of there, is that what he told you? A. Yes, sir.

Q. Did you notice at the time that you talked to Mr. Caldwell that in addition to the cuts you mentioned on his face, temple, and the burn on his face, that he had cinders on his face?

A. Oh, I don't remember it at this time.

Q. I will ask you in response to this at the other trial if you weren't asked this question:

“Question: Just state what you said to him and what he said to you at that time.

“Answer: Well, I think I was the first [179] one to talk. I asked him if any of the fishermen were in the water or anyplace, if we could help him pull them out and if by any chance we could do him any good. And he said that, in these words, more or less,

(Testimony of Garrett Ray.)

'No, they are all dead and everything is on fire and is going to blow up.' He said, 'Get out of here.' So right after that he took off. He went, oh, towards the office on the dock. He had been, oh, cut to the head here and little cinders more or less to the face. His clothes I didn't notice.'

Isn't that correct, sir? Does that refresh your recollection? A. Yes, sir; it does.

Q. So you did see some cinders in the man's face at that time?

This little office you are speaking of that Mr. Caldwell was headed for at that time is indicated on the south end of this sketch, which is Libelant's Exhibit 2 marked "Office"?

A. Yes, sir; that's it.

Q. The change room and office, you are familiar with that, generally? A. Yes, sir. [180]

Q. At the far end of it. What did you do, then, Mr. Ray, after you had this conversation with Mr. Caldwell? Did you stay in the area or did you go back to the Lompoc, or what did you do?

A. Well, I remember the bo'sun coming up about that time, he was running down, so if I remember right this fellow, I think it was Jensen, and I think the bo'sun and myself started to hook up a fire hose just about, right by the little offset, not the gas, but the other one, and we started to hook that up, and then they started to holler from the ship to get back; they told us, more or less, everybody to get back.

(Testimony of Garrett Ray.)

Q. In other words, you got a signal from the Lompoc to come back on the Lompoc, is that right?

A. Yes, sir; they wanted to get the ship out of there.

Q. When you were starting to assist in hooking up the fire hose, did you make any further observation toward the dock installation or the fishing boat Santa Lucia as to the fire situation then?

A. Yes, sir; I glanced at it and also noticed the fishermen in the dory at the time. I never stated that before, but I remember now of coming back, that I had seen them out there in the dory.

Q. In the dory? A. Yes, sir.

Q. By that time you saw quite a terrific fire going? [181]

A. Yes, sir; it was going pretty good.

Q. And over a considerable area?

A. Yes, sir.

Q. Did you notice that the fishing boat itself was showing flames at that time?

A. Well, I hadn't seen any on it, no, sir; I didn't notice any on it from what I could see of it. A lot of it on this little offset here on the gas dock was going pretty good.

Q. The fire at that time was concentrated in the area you previously mentioned on the face of the pilings on the dock and on the service station area, too?

A. Well, at that time I couldn't see the pilings too good, but mainly on the service station area.

(Testimony of Garrett Ray.)

Q. How high were the flames, according to your observation at that time?

A. I probably at that time I could have easily said, but, like I say, now I don't recall too good.

Q. It was a big fire?

A. Yes, sir; it was pretty good.

Q. Could you see the fishing boat?

A. Well, from where I was I could see a stern of a boat, the stern of the fishing boat, because it was kind of propped up a little bit from going down.

Q. In other words, the stern was up and the bow was down, is that right? [182]

A. No; the stern and the bow were both—like I say, when it sunk, it went like that.

Q. Fractured—— A. Yes, sir.

Q. Broken in the center?

A. From what I recall, yes, sir.

Q. And it was sinking, it was in the process of going down, isn't that right? A. Yes.

Q. Then you went back to the Lompoc. Did you make any further observations as to the condition of fire or the condition of the fishing boat after you left in response to the call from the Lompoc?

A. No, sir; I didn't; all I could see was the fire.

Q. You could see a big fire?

A. I was sent back to the ship.

Q. And the Lompoc took off?

A. Well, yes; this other fellow and I let go of the lines.

(Testimony of Garrett Ray.)

The Court: Do I understand as you observed the ship going under it broke asunder amidships?

The Witness: To me it did, yes, sir.

The Court: And midships then it went down——

The Witness: Well, it didn't completely go down, it just broke. Actually it didn't look to me like it was going to sink, it more or less broke and just about stayed [183] there.

The Court: And settled down there?

The Witness: Yes, sir. The stern protruded slightly, from what I recall, the bow a little bit, yes, sir.

Mr. Nave: I have no further questions. Thank you, Mr. Ray.

Mr. Silvers: Should we take our morning recess at this point?

The Court: All right. How long do you generally take?

Mr. Nave: Ten minutes.

The Court: All right.

(Short recess.)

Mr. Silvers: Your Honor, I have three photographs which I have shown to counsel which I would like to offer in evidence as Respondent's Cardinale Exhibits next in order.

The Court: Received in evidence by consent.

The Clerk: Respondent Cardinale Exhibits E, F and G.

(Whereupon, the foregoing photographs were received and marked as Respondent Cardinale Exhibits E, F and G in Evidence.)

(Testimony of Garrett Ray.)

The Court: What is it stipulated that these are photographs of?

Mr. Silvers: Exhibits E and F are aerial [184] views showing the Union Oil dock, service station area, looking seaward. The Exhibit G is a view, an aerial view of the dock looking toward shore. Exhibit E is a closeup of an area of the dock showing a tugboat alongside and the gas service station area in the center background.

Mr. Nave: I believe, if your Honor please, we should state that these particular photographs were taken some time after this explosion and it shows the dock after repairs had been made and does not show the condition that existed at the time of this particular incident.

Mr. Silvers: That's correct, but it does show the location of the gas service area.

The Court: May I look at them a moment?

Mr. Silvers: Surely.

Cross-Examination

By Mr. Silvers:

Q. Mr. Ray, you have marked on our Exhibit, Libellant's Exhibit 2, the location of the ladder that you climbed up after the explosion and which was in the vicinity of the tug Avila. Would you mark on the same diagram the position of the stern of the boat, of the tugboat, the position it was in at the time you were fishing from it. Just draw a straight line, if you would.

(Testimony of Garrett Ray.)

The Court: I think you better do it in pen [185] and then we will have a permanent marking.

Q. (By Mr. Silvers): Draw a straight line where the stern, the after end of the tug Avila was from which you were fishing, keeping in mind the position of the ladder you have already marked.

A. (Witness marking.)

Q. And would you write "stern"? Thank you.

From that position you told us you overheard a portion of a conversation between someone on the fishing boat and the Union Oil dock attendant on the gas service station dock; right?

A. Yes, sir.

Q. And the fishing boat man whom you heard speak was the man who was by the gas hose on the port side of the Santa Lucia, is that correct?

A. I couldn't say. I don't remember just what person it was that said it.

Q. In any event, it was a person on the port side of the Santa Lucia close to the gas dock?

A. Yes, sir; they were all—nobody was on the starboard side.

Q. And what you heard from the fishing boat was, "Have you given me my thirty gallons," in essence?

A. Yes, sir.

Q. And you heard the man on the dock reply, "I have given [186] you fifty or sixty already," is that correct?

A. Yes, sir.

Q. Now, did he say that in an excited tone of voice?

A. Well, the fellow that asked if he had given

(Testimony of Garrett Ray.)

him 30 gallons, he didn't, but the fellow on the dock who said he had given him 50 or 60 already, he more or less yelled in more than a normal voice.

Q. And did that appear to be an excited yelling?

Mr. Nave: I object to that, your Honor please.

The Court: This is really cross-examination, I suppose.

Mr. Nave: Yes, your Honor.

The Court: I am going to permit it. Objection overruled.

Q. (By Mr. Silvers): You may answer.

A. Well, I honestly don't remember, just doesn't hit me.

Q. Well, in any event, you heard what you call a strong yelling?

A. Yes; above the normal voice. I remember that.

Q. Pardon?

A. I say it was more than a normal voice.

Q. And immediately after he yelled, "I have given you 50 or 60 already," you saw him turn and head toward the back of the gas dock, is that correct? [187]

A. Yes, sir.

Q. He had gone just about six or seven feet from the edge of the dock where he had been standing when you observed this flash, is that right?

A. Yes, sir.

Q. And then seconds later you heard the explosion?

A. Well, about a second later.

Q. Or a second later. Now, calling your atten-

(Testimony of Garrett Ray.)

tion to the flash, Mr. Ray, you have told us that the flash was about fifteen feet in height?

A. Yes, sir.

Q. According to your recollection, is that correct? A. Yes.

Q. I would like you to tell me about how much of the flash you recall extending above the level of the dock where the Union Oil man had been standing? About how many feet above that was the flash that continued?

A. Well, close as I can remember, like I say, it was about 15 feet high and I would say five or six feet of it protruded from the level of the dock down and the remainder would go about, well, I'd say nine feet up from the dock.

Q. About nine or ten feet of the flash was above the level of the dock on which the Union Oil attendant had been standing, is that correct?

A. Yes, sir. [188]

Q. And approximately how far would the flash have extended, according to your best estimate, from the edge of the dock toward the port side of the Santa Lucia?

A. Well, from what I remember I'd say it was about, well, almost practically half way.

Q. Put it in feet for us, please.

A. Well, I would say about——

Q. About how many feet from the edge of the dock would the flash extend toward the Santa Lucia?

A. I'd say about six feet, maybe, roughly.

Q. About six feet from the edge of the dock, is

(Testimony of Garrett Ray.)

that correct? A. Yes.

Q. The flames that you first observed were flames that you saw when you were walking along the deck, or moving along the deck of the tug after you had jumped into the water and gotten back onto the tug and were moving toward the ladder to go ashore, is that correct? A. Yes, sir.

Q. And from that point on the tug Avila you were able to observe flames only in the area of the dock, the gas service dock, and not on the Santa Lucia, is that correct?

A. Yes, sir; there wasn't none on the boat.

Q. At that point you saw flames on top of the gas service station dock apparently at the base of those large tanks you [189] have pointed out to us, is that correct?

A. Yes, sir; they were—I could see fire under the dock and, like I say, on the upper part of the pilings and out toward the ridge of the dock where—well, out toward the ridge, the closest part to the boat.

Q. Then the next time that you recall seeing the flames and fire on the gas service dock was when you were doing some work in connection with the fire hoses back toward the main area of the dock, is that right? A. Yes.

Q. At that time you were still unable to see any flames at all on the Santa Lucia, but the fire on the dock had increased considerably, is that correct?

A. Yes; I could see the—oh, just about better than half of the Santa Lucia.

(Testimony of Garrett Ray.)

Q. I am going to show you Respondent's Exhibit E, Mr. Ray, and ask you if this shows the ladder that you came up after the explosion?

A. Yes; it is right there.

Q. You are pointing to a ladder in the upper center part of the photograph, is that correct?

A. Yes; the rails—has a rail on there.

Q. Was the stern position that you were in on the Avila before the explosion to the Santa Lucia side of that ladder?

A. What was that again? [190]

Q. Were you fishing from the stern from a point shoreward or the Santa Lucia side of the ladder you have just pointed to?

A. Yes; the ladder was on the side—the Santa Lucia was on. I didn't quite get that, I guess.

Q. Let me put it another way: How much, if any, of the tug Avila extended shoreward, in a shoreward direction from the ladder?

A. Past the ladder?

Q. Past the ladder.

A. Oh, I'd say it was about, oh, at least between fifteen and eighteen feet, I think.

Mr. Silvers: Those are all the questions I have. Thank you.

The Court: Any redirect?

Mr. Vartan: No, your Honor.

The Court: All right. Thank you.

(Witness excused.)

The Court: Next witness.

Mr. Vartan: Nino Tarantino.

NINO TARANTINO

one of the plaintiffs called as a witness in his own behalf, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows: [191]

The Clerk: Please state your name to the Court.

The Witness: My name? Nino Tarantino.

Direct Examination

By Mr. Vartan:

Q. Mr. Tarantino, what is your business or occupation? A. Fisherman.

Q. And how long have you been a fisherman?

A. All my life.

Q. How old a man are you, Nino? A. 67.

Q. You a married man? A. Yes.

Q. Any children?

A. Three; is all married.

Q. They are not living at home, is that right?

A. Yes.

Q. On September 28, 1954, you were working on the Santa Lucia, is that right? A. Yes, sir.

Q. How long before the Santa Lucia sank on this day had you been working on the Santa Lucia?

A. Oh, I'd say about seven, eight minutes.

Q. Seven or eight months?

A. No; I mean when it sink. [192]

Q. No; how long had you—

A. Fishing, oh, about eight, nine months, something like that.

Q. Eight or nine months. Now, Nino, if you don't

(Testimony of Nino Tarantino.)

understand—— A. Yes.

Q. ——you tell me. A. Yes, sir.

Q. Okay? A. Yes, sir.

Q. All right. You just answer the questions we ask you. Okay? A. Yes.

Q. What was your job during the eight months, or whatever time it was? A. On the winch.

Q. No, Nino; I want you to wait until we finish the questions, and then answer. Okay?

Now, what was your job on the Santa Lucia during the time that you worked those eight months?

A. On the winch.

Q. You were on the winch? A. Yes.

Q. I see. Did you have anything to do with the engines? A. No. [193]

Q. Did you have anything to do with the repairing of the engines? A. No.

Q. Or operating the vessel? A. No, sir.

Q. Nino, what time of the day did this happen?

A. The 28th, I guess.

Q. Yes; what hour? A. Five-thirty.

Q. I see. Was the sea calm—strike that.

Mr. Vartan: Your Honor, if there is no objection I will lead the witness.

The Court: You go ahead until there is an objection. I don't think counsel will object.

Mr. Vartan: No.

The Court: Let him tell us what happened.

Mr. Vartan: That is what I would like to do.

The Court: Go ahead.

Q. (By Mr. Vartan): Now, Nino——

(Testimony of Nino Tarantino.)

A. Yes.

Q. The ship Santa Lucia came to the gas dock and they tie up, right? A. Yes.

Q. Now, at that time were you working after tie-up, were [194] you working?

A. No; just wait to give the hose.

Q. I see. Did you help tie the vessel?

A. Yes.

Q. You helped with the ropes? A. Yes.

Q. And lines? A. Yes.

The Court: Where did you make the ship fast, what part?

The Witness: What part in the dock?

The Court: What line did you have, the stern?

The Witness: No; I have the winch line. The winch line.

The Court: The winch line?

The Witness: You see, and——

The Court: You pull it in on the winch?

The Witness: That's right.

The Court: I see.

Q. (By Mr. Vartan): When the ship came to the gas dock, Nino—— A. Yes.

Q. ——the Santa Lucia was tied to the dock?

A. Yes.

Q. With a line? [195] A. Yes.

Q. Now, did you, yourself, handle the line that tied up the Santa Lucia?

A. Everybody got, tied up; I helped, too.

Q. And you helped, too? A. Yes.

(Testimony of Nino Tarantino.)

Q. All right. After you tied up the Santa Lucia, what did you do then; where did you go?

A. We see first give it the hose. And then take, sweep—full of anchovies, pull it by the head, pull the heads off.

Q. You were knocking the heads of the anchovies off to get them out of the net? A. Yes.

Q. And that was a brail net? A. Brail.

Q. Were you doing that, too?

A. No, pull them up, the boys pull it up.

Q. In other words, the engines were turned off and you were turning the winch by hand?

A. That is right.

Q. If the engines were running how would you lift the brail net?

A. If the engines running, the men won't pull them up, pull up by winch.

Q. You won't need the men, then? [196]

A. No; no men at all.

Q. I see. After the Santa Lucia tied up at the gas dock did you hear a conversation—strike that.

Did you hear talk between anybody on the Santa Lucia and anybody on the gas dock? A. Yes.

Q. Now, tell his Honor what you heard; what did you hear?

A. I heard, "Give me thirty gallons of gas."

Q. Who said that? A. The skipper.

Q. What's his name? A. Cardinale.

Q. Frank Cardinale? A. Yes.

Q. Did you hear the man on the dock answer? What did he say?

(Testimony of Nino Tarantino.)

A. He said, "All right." And he give him the hose.

Q. Who did he give the hose to?

A. To the skipper.

Q. I see. Did you see what the skipper did with the hose? A. Put them in the tank.

Q. Where was the tank?

A. On the side—the dock.

Q. On the side of the vessel closest to the dock?

A. Yes. [197]

Q. Was it at the back end or forward?

A. The bow to the shore.

Q. It was toward the bow?

A. To the shore.

Q. Yes. When you say he put the hose in the tank, you didn't see the tank there?

A. No, no.

Q. Where did he put the hose, in a hole?

A. In the hole.

Q. I see. Did you then keep watching him?

A. No; we keep working.

Q. Then you went working?

A. We keep them working.

Q. Did you continue to watch Frank Cardinale after he put the hose in the hole? A. Yes.

Q. Did you keep watching him, or did you go to work?

A. No; Cardinale keep us on the work.

Q. He kept you on the jump, so you went working? A. Cardinale watch the hose.

Q. Now, what part of the vessel was the winch?

(Testimony of Nino Tarantino.)

A. In the middle of the boat.

Q. In the middle of the boat right back of the galley?

A. Yes. The other side of the tower house.

Q. I see. You were by the winch when something happened; [198] when this happened where were you?

A. It was in the line to wash your hands, you're all dirty, all stink of fish. All at once blow off the boat and then I don't remember anything no more.

Q. Now, you say you were waiting in line to wash your hands?

A. Yes.

Q. Before the explosion took place?

A. Yes.

Q. And you say your hands were stinky with fish, is that what you mean?

A. It was blood; the boys all dirty coming to work and wash your hands.

Q. You were waiting to wash your hands?

A. Yes.

Q. All right. When the explosion took place, Mr. Tarantino, how many noises did you hear?

A. I heard two noises.

Q. In your own way tell the Judge just what you did hear, say it, tell us in your own way.

A. I heard this way: I feel my feet going and then uuummmm UUUMMM—BOOM!

The Court: Indicating a roaring sound followed by a boom or an explosive—which might be indicative of an explosion. R-o-a-r—BOOM!

The Witness: uuummmm UUUMMM—BOOM!

(Testimony of Nino Tarantino.)

The Court: A roaring noise the witness is giving.

Q. (By Mr. Vartan): Now, did you hear more than one of those or two of those?

A. Two. This way I saw myself uuummmm UUUMMM—BOOM! And then I don't know nothing at all.

Q. All right. Were you standing up when that happened? A. No.

Q. Before it happened were you on your feet standing up in line?

A. Before I stand in line.

Q. All right; what happened to you when that happened, when you heard those two noises, whatever you described, what happened to you? Did you fall down?

A. I fall down, somebody, I don't know, helped me. I never know. It is all full of wood. I have this arm is all like that; can't move; my face is all full of water, blood. I don't know what happened.

Q. All right. Now, did you say Horace helped you up, Horace Adagio helped you?

A. I never hear, who?

Q. Did you say that Horace Adagio helped you up? A. Yes; that's right.

Q. That's the French boy? [200]

A. Frenchie.

Q. When you got up did you notice any fire any place?

A. I see all the dock all afire, all the dock is on fire.

(Testimony of Nino Tarantino.)

Q. At that time did you notice or see any fire on the Santa Lucia?

A. No; never got started at that time.

Q. I see.

A. Never get started. I see the boat sink, but I never see fire.

Q. All right.

A. I see all the dock all afire, scared.

Q. The dock was on fire? A. All afire.

Q. And when you saw the dock on fire did you see any fire at that time on the Santa Lucia?

A. No; I don't see. After we see.

Q. Afterwards?

A. After, when we take the skiff and we go take the skiff, going to help little, little by little, then we come up, some boys help. I don't know who it is and then they give a hand.

Q. All right. But it was after you were—everybody was in the skiff and you left the Santa Lucia in the skiff, is that right? A. I never hear.

Q. After this happened—— [201]

A. Yes.

Q. The boys, you and the other boys got into the skiff, right? A. Yes.

Q. And you started rowing away? A. Yes.

Q. And is that when you saw some fire on the Santa Lucia? A. Yes; then we saw the fire.

Q. That is the first time?

A. First time; then we saw it on fire.

Q. I see. There is no dispute on this. You were

(Testimony of Nino Tarantino.)

taken to the French Hospital in San Luis Obispo, right?

A. Yes; I don't know what hospital is it; that is a long time.

Q. All right. And you were there three days, is that right? A. Three days; two or three days.

The Court: Were you in bed all that time?

The Witness: Yes.

The Court: Did you have any pains?

The Witness: Huh?

The Court: Any pain?

The Witness: Pain, yes.

The Court: Where?

The Witness: Had pain in my arm. [202]

The Court: Indicating his left forearm in the vicinity of the elbow.

The Witness: Right in my face.

The Court: What part of your face?

The Witness: This (indicating).

The Court: Indicating the left side of his face just in front of his ear.

Q. (By Mr. Vartan): Any place else?

A. That's all, I guess.

The Court: Did the doctor put anything on your face?

The Witness: No, my wife was taking care of me, and my daughter.

The Court: Did the doctor do anything for your arm?

The Witness: No, I was broke, because somebody

(Testimony of Nino Tarantino.)

make a scare, going to pay all the bills. (Balance of answer unintelligible to Reporter.)

Mr. Vartan: I show counsel a photostatic copy of the records of the French Hospital, your Honor, and also a statement for services rendered at that hospital.

The Court: Any objection?

Mr. Nave: I would like to examine them, your Honor, please.

The Court: Received in evidence and if you have any objection you can state it on the record [203] later.

Mr. Nave: Very well.

The Clerk: Libelant's Exhibit 4 introduced and filed into evidence.

(Whereupon the foregoing medical records and statement were marked and introduced into evidence as Libelant's Exhibit No. 4.)

The Court: Turn around. Let me see the left side of your face.

The Witness: Now it is all right.

The Court: Now it is all right?

The Witness: Now it is all right.

The Court: No pain?

The Witness: No. When weather is bad, maybe I get pain this arm.

The Court: Once in a while in rough weather he gets pain, indicating his left elbow.

The Witness: When it rain or change of weather.

(Testimony of Nino Tarantino.)

The Court: How old are you now? Sixty-seven?

The Witness: Sixty-seven.

The Court: You get any pains any place else when it rains?

The Witness: No. Well, sometimes.

The Court: Sometimes.

The Witness: I know I never have it [204] before.

The Court: Never had the pain in the elbow before?

The Witness: No.

The Court: Did you have any pain in any other part of your body when it rained before?

The Witness: When it rain, my back, some time.

The Court: How long have you had the pains in your back?

The Witness: Oh, since this accident.

The Court: Not before?

The Witness: No.

The Court: The Court upon the record observes there is no mark or scar on the left side of his face in the portion indicated.

Mr. Vartan: Yes, your Honor.

The Court: Of the witness. You got any mark on your arm?

The Witness: I got no mark.

The Court: No mark?

The Witness: No, no mark. It bother me with the change or gets foggy, when it rain or it get chill.

(Testimony of Nino Tarantino.)

Q. (By Mr. Vartan): Did you have any headaches after this?

A. I had headache, I got all the time still.

Mr. Vartan: This is the man, your Honor, for the record, that claims that—I want to give him his day in [205] Court.

The Court: Well, the hospital record says “Left forearm no significant abnormality noted,” that’s the X-ray report.

Mr. Vartan: Yes, that’s true, no fracture claimed.

The Court: The preliminary diagnosis on admission speaks of multiple contusions and abrasions of left elbow, multiple contusions on the face. Let’s just see what it says.

Doctor’s examination records in this Exhibit simple ecchymotic condition around the left elbow, that’s black and blue marks, and tender posteriorly and abrasions to the left cheek. These hospital records don’t note or record any substantial or serious injury.

Mr. Vartan: That’s right, your Honor.

The Court: It is stipulated that this bill of the San Luis Clinic is reasonable in amount?

Mr. Silvers: Yes, your Honor.

The Court: All right.

Q. (By Mr. Vartan): Now, Nino, how long after this happened did you return to work?

A. Oh, I don’t know, one month.

Q. Who did you work for? A. Romeo.

Q. Sal Romeo? [206] A. Yes.

(Testimony of Nino Tarantino.)

Q. So you're away from work one month, is that right? A. Yes, sir.

Q. How much money did you lose because you didn't work that month?

Mr. Nave: We object to that.

The Court: Objection sustained. How much were you getting aboard the ship, the Santa Lucia?

The Witness: How much I make?

The Court: How much were you receiving, what were you getting there, were you working on a share?

The Witness: Yes, work on a share.

The Court: How much did you draw as your share a month?

The Witness: By the month at the time I never make much money.

The Court: How much?

The Witness: I think I make about a hundred dollars.

The Court: How much did you get from Romeo when you went to work for him?

The Witness: I work about \$800.00.

The Court: \$800.00 for how long?

The Witness: Oh, about one month.

The Court: How many?

The Witness: One month. [207]

The Court: \$800.00 in one month?

The Witness: Yes.

The Court: Where did you work on Romeo's ship?

The Witness: Work in San Pedro.

(Testimony of Nino Tarantino.)

The Court: Where?

The Witness: I don't know, I can't remember now, I work San Pedro.

The Court: San Pedro?

The Witness: San Pedro or Santa Barbara, one of the two, a long time ago, I don't remember.

The Court: Did he pay you by check?

The Witness: He paid by check.

The Court: What happened after you came out of the French Hospital; you went there for three days? Then what did you do after that, go home?

The Witness: I go home.

The Court: Yes. And what did you do at home?

The Witness: We go to bed.

The Court: At night?

The Witness: Yes, I go to bed because I was sick.

The Court: Did you go to bed in the day time?

The Witness: Huh?

The Court: Did you stay in bed in the day time?

The Witness: Yes, in the day and night.

The Court: How many days did you stay in bed? [208]

The Witness: Oh, I think over two weeks.

The Court: In bed?

The Witness: In bed.

The Court: Did you have a doctor?

The Witness: No.

The Court: No doctor.

The Witness: No. People make me scared, say

(Testimony of Nino Tarantino.)

you going to pay on this bill and I didn't want to pay.

The Court: Did you have any pain while you were in bed?

The Witness: Yes.

The Court: Where did you have the pain?

The Witness: The pain in my head and my back and my face and my arm.

The Court: You interrogate him, counsel, I don't wish to do this.

Mr. Vartan: Yes.

The Court: I want to find out what treatment he had, if any, during that month that he didn't work, what pains he experienced, what efforts he made to go to work during that time. I suggest you inquire about it.

Q. (By Mr. Vartan): Now, Nino, after you were in the French Hospital three days you came home, is that right? A. Yes. [209]

Q. In answer to His Honor's questions, you stayed in bed about two weeks? A. Yes.

Q. During that time did you feel pain, were you sick any place? A. Yes, I was sick; yes.

Q. All right, tell us where, what parts of your body.

A. My arm, my face, can't eat, my back, my head.

Q. Nino, on your face, when you left the French Hospital, did you have any mark on your face?

A. Yeah, I got a big mark, I got a big crust.

(Testimony of Nino Tarantino.)

Q. A big crust? How long did that crust stay on your face?

A. Oh, it stay about—well, it stay about ten to fifteen days, maybe a month.

Q. Did it still hurt after the crust was gone?

A. I don't know now, but the trouble they give me I had with my back and arm.

Q. I see. Now, you said you did not have a doctor during the month that you were away from work?

A. No.

Q. Why didn't you have a doctor?

Mr. Nave: Object to that question.

The Witness: People make me scared——

The Court: Overruled, he may answer. He is a seaman. [210]

The Witness: People make me scared I have to pay the bill and the people——

Mr. Nave: I am sorry, your Honor, I didn't understand that.

The Court: He says the people made him scared, he had no money to pay the bill and he no go.

Q. (By Mr. Vartan): Is that right?

The Court: When you went to work for Romeo what did you do aboard Romeo's ship, what work did you do there?

The Witness: We work on the red light, red light work.

The Court: Did you handle the nets on Romeo's ship?

The Witness: Yes, handle the nets, haul in the fish.

(Testimony of Nino Tarantino.)

The Court: You hurt in the face on Romeo's ship?

The Witness: No, I work my fish, then take it easy, take it easy.

The Court: Well, what did you do when you were on Romeo's ship, what work did you do?

The Witness: I work in the net.

The Court: What did you do on the net?

The Witness: Pull the line. [211]

The Court: Which hand?

The Witness: Pull the line, pull them up by both, everybody pull——

The Court: You pulled——

The Witness: Pull them up by pulling and then pull them up by hand.

The Court: Pull them up by hand? You took one of the lines on the net——

The Witness: Yes.

The Court: ——and pulled up the net, the red light?

The Witness: Dragline.

The Court: Oh, dragline.

Q. (By Mr. Vartan): Now, Nino, you said when you went to work following this occurrence you worked for Sal Romeo; what were you fishing for? A. Before?

Q. No, after one month you went to work for Sal Romeo; right? A. Yes.

Q. And you went down toward Santa Barbara and San Pedro; right? A. Yes.

Q. What kind of fish were you catching?

(Testimony of Nino Tarantino.)

A. After, I stay home, I stay home and never work. [212]

Q. No. When you worked for Sal Romeo after the Santa Lucia blowup—— A. Yes.

Q. ——you worked for Sal Romeo; right?

A. Yes.

Q. What kind of fish did you go for?

A. Oh, sardines.

Q. Was that a good season?

A. Well, you make good money.

Q. How much did you make?

A. Well, I made \$800.00, then I have to quit.

Q. How much time?

A. Oh, one month, maybe a little more. That is a long time.

Mr. Vartan: You may cross-examine. [213]

Cross-Examination

By Mr. Nave:

Q. Mr. Tarantino, when did you first go to work for Mr. Cardinale?

A. We go to work before I get—about three months before I started to go to San Pedro, about three months.

Q. How long before this explosion, this fire and explosion, how long before that was it that you went to work? A. About three months.

Q. About three months.

A. We fish Monterey and we got to San Pedro, we go to Santa Barbara.

(Testimony of Nino Tarantino.)

Q. Do you remember what month you went to work for Mr. Cardinale? Was it June or July, or what month was it?

A. Well, let me see. I cannot remember exactly, but I know about three or four months, three months, not exactly, working the vessel, be a little over.

Q. About three months before this explosion you had gone to work on the Santa Lucia?

A. Yes.

Q. And your job on the Santa Lucia was handling the net? A. No, on the winch.

Q. The winch? A. Yes.

Q. I see. During those three months before this explosion, [214] had you been fishing every day?

A. The boat?

Q. Yes.

A. When they fish, we go fish, I don't know we go every day, or go three or four times a week.

Q. During that three or four months before this explosion, did you do any work on the fishing boat Santa Lucia? A. Sure, I did.

Q. Well, I know you were fishing, but did you do any repair work? A. Work, yes, fishing.

Q. I understand, but what I mean is did you do anything painting the boat, did you paint the fishing boat?

A. No, I never paint a boat, I was carrying the net, fix the net. I got nothing to do with the painting.

(Testimony of Nino Tarantino.)

Q. You did then do some work during that three months in repairing the boat, did you?

A. I don't know what happened to the skipper, but I know when we go fishing, we go fishing.

Q. All you did was you worked fishing?

A. Fishing, that is all.

Q. You didn't have anything to do with any repairs to the boat? A. No.

Q. Now, during that three months' period before this [215] explosion, do you know of any repair work that was done on the Santa Lucia?

A. No, I got nothing to do with the boat.

Q. Did you see any work done?

A. No, I just, my job is go fix the net.

Q. I see. And what had you been fishing for during those three months, what kind of fish?

A. Anchovies.

Q. Anchovies? A. Yes.

Q. Where did you go?

A. Where did you go what?

Q. Where did you go to fish?

A. Outside the breakwater.

Q. Out of Monterey? A. No, it is Avila.

Q. Avila? A. Yes.

Q. How long would you stay out at sea before you would come back to Monterey during that three-month period?

A. Depending on the fish; we got a lot of fish, we stay, come back to Avila; we got no fish, maybe six, seven or eight, ten hours.

(Testimony of Nino Tarantino.)

Q. When you got a catch of fish, do you take it into Avila? [216]

A. Yes.

Q. And then you go back out again, fish some more?

A. If you want to fish, we try to make it, if you don't—

Q. Fine. Then would you go back to Monterey?

A. No, the anchovies—go to Monterey and we stay over there and very soon the sardine season opens, we stay over, the whole group.

Q. But pretty near every day during that three months you were out fishing somewhere, is that right?

A. Well, I can't tell exactly, when we fish, we go fish, maybe three or four days, maybe a week, maybe one.

Q. You would stay out three or four days, maybe a week and then you would come back?

A. No, three or four days, go home every night.

The Court: Every night. He would go out three or four times a week; the other days, no good weather, no good fishing, you stay home.

Mr. Nave: Thank you, your Honor. I didn't understand it.

The Witness: Yes.

The Court: Yes.

Q. (By Mr. Nave:) Now, had you ever been in the engine room of the Santa Lucia?

A. No. [217]

(Testimony of Nino Tarantino.)

Q. You never been down below decks at any time?

A. I got no business, Mister, to go over there, my business is in the nets.

Q. Who was the cook, who cooked the meals on the fishing boat?

A. The cook is Tony Belleci.

Q. Belleci? A. Yes.

Q. You had meals on that fishing boat, did you?

A. I don't know nothing about the cook, I work on deck, I don't know anything about it. When they cook the meals, the bell, we go eat, he don't ring the bell, we don't go eat.

Q. Well, now, on the day of this explosion——

A. ——at night we had the big meals.

Q. On the day of this explosion did you have something to eat in the galley? A. No.

Q. Did you have any coffee in the galley?

A. Never had a drop of water.

Q. You had what?

The Court: Didn't have a drop of water.

Did you have a drop of vino, of wine?

The Witness: No.

Q. (By Mr. Nave): You weren't in the galley at any time on the day of [218] this explosion?

A. No, the engine, we got it stopped, because make the gasoline, got no business to cook over there, see.

Mr. Nave: I will confess I couldn't understand it.

The Court: He gave a good answer. He says the

(Testimony of Nino Tarantino.)

engine stop, we take on gasoline and got no business to cook when you take on gasoline; is that right?

The Witness: Yes, sir.

(The Court speaking to the witness in Italian; unintelligible to the Reporter.)

Q. (By Mr. Nave): Well, I am speaking now of early in the morning. Did you have breakfast on the Santa Lucia, did you have coffee or anything at all?

A. No.

Q. I am not talking about the——

A. That is all right, we wait, when we work, we work fishing, but no cook.

Q. No coffee?

A. I don't know if he make coffee, but when we work, we got to make a few dollars to eat.

Q. I appreciate you like to make a few dollars, but were you in the galley at all at any time on the morning before this explosion took place?

A. When they outside the dock, we go eat, the coffee, we [219] go to eat.

Q. You did eat?

A. Why, sure. Not on the dock.

Q. On the dock?

Mr. Vartan: No, counsel, he says eat outside the dock, before we come to the dock.

The Court: Don't get exited now. He is having a little difficulty in understanding the witness.

Mr. Nave: Yes, your Honor. I am not trying to be unfair.

(Testimony of Nino Tarantino.)

The Court: Of course, you are not.

Mr. Vartan: I didn't intend to infer——

The Court: Next question.

Q. (By Mr. Nave): So that I understand—
please understand I have a lot of difficulty in understanding you.

The Witness: That is all right.

Q. You had breakfast that morning at Avila, did you? Is that right?

A. No, I never had no breakfast, we go to—
have a cup of coffee when we go out, we got no
right to cook coffee when on the dock, especially
when they make the gasoline, the stove is completely
dead.

The Court: He says it's very stupid to do that
then; is that right? [220]

The Witness: We no got no right to cook because
it is dangerous.

(Balance of answer unintelligible to the reporter.)

The Court: All right. Do you have any more
questions of this witness?

Mr. Nave: Yes, I have, your Honor.

The Court: Go ahead.

Mr. Nave: If I may be permitted.

The Court: Yes, take your time.

Q. (By Mr. Nave): Now, the gasoline tank on
the fishing boat blew up, didn't it?

A. I don't know it blew up. I see the dock is all

(Testimony of Nino Tarantino.)

afire, all I know blow up, but I know the dock is all afire.

Q. No, my question is——

A. My question, I don't know nothing about the blow up the tank. I see the dock is all afire, that is all I can say.

Q. Did you see any fire on the boat at all at the time the gasoline tank blew up?

A. We see five, seven, ten minutes, I see the fire, maybe it was like this, and I get up, I get up like that, and I see all the fire, I don't know, all I know is what I heard, the noise, see, my feet come weak, and then all the noise.

(Court conversing with the witness in Italian.)

Mr. Nave: Page 30 of Mr. Tarantino's deposition, counsel. [221]

Mr. Vartan: May it be understood that this deposition was taken without an interpreter?

Mr. Nave: Very well.

Mr. Vartan: And it was your deposition.

Mr. Nave: Very well.

Q. (By Mr. Nave): Mr. Tarantino, you remember when your deposition was taken on August 25, 1956, and I asked you some questions about what happened?

The Court: It is my custom when you use a deposition to mark it for identification.

Mr. Nave: I will, your Honor.

The Court: All right.

(Testimony of Nino Tarantino.)

Mr. Nave: Very well.

Q. (By Mr. Nave): I asked you this question and you gave this answer:

“Question: The boat was on fire?”

To which you answered:

“That is all on fire.”

The next question was:

“The boat was on fire?”

“Answer: Yes.”

The Court: Were you asked that question and did you make that answer?

The Witness: I asked about five, six, seven [222] minutes, no momentary fire, I asked the question, five, six minutes, then fire, that is correct.

Q. (By Mr. Nave): The next question:

“Where was the fire coming from on the boat?”

“Answer: From where you made the gasoline.”

Did you answer that question that way?

A. What is the question, let me understand it, maybe.

Q. “Question: Where was the fire coming from on the boat?”

To which you answered:

“From where you make the gasoline.”

A. The fire coming from the dock.

The Court: Did you answer that question that the lawyer read to you in the manner in which he read it?

The Witness: What is your question, please?

The Court: “Question: Where was the fire com-

(Testimony of Nino Tarantino.)

ing from on the boat?" Remember the lawyer asking you that question?

The Witness: It blow up at the dock.

The Court: Just one minute. Do you remember the lawyer asking you this question: "Where was the fire coming from on the boat?" Remember he asked you that question?

The Witness: Well, that's a long time ago, my gosh, see, that is a long time. [223]

The Court: Do you remember making this answer to that question?

The Witness: What did I answer?

The Court: "From where you make the gasoline."

The Witness: Make the gasoline at Avila.

The Court: No, on the boat.

The Witness: Not on the boat, on the dock.

The Court: Is that where the fire came from?

The Witness: No, I see the dock is all fire.

(Court and the witness speaking in Italian.)

The Court: Now, were you asked this question then by the lawyer:

"Question: Where the gasoline tank was?"

And did you make this answer?

"Gasoline tank it blew it up."

Did you say that?

The Witness: I never remember.

The Court: All right. Then did he ask you this question?

"Question: Blew up the deck?"

(Testimony of Nino Tarantino.)

And did you answer?

“Blew up all the boat.”

Did you make that answer?

The Witness: (Answer unintelligible to the reporter.)

The Court: He says, I don't know, I don't understand very much these words.

Is it conceded that that is the recorded interrogation and answer of this witness?

Mr. Vartan: Yes, to that limited extent, your Honor.

The Court: All right.

Q. (By Mr. Nave): Did you receive any burns on your face or in your hair at the time of this explosion? A. No, my face and my arm.

Q. Did you get a burn, your face get a burn on it? A. No.

Q. I call attention to the deposition, page 29, the top of the page, first question. I asked you this question at the time your deposition was taken, to which you gave these answers:

“Question: Did you receive any burns to your face or your hand?”

To which you answered:

“My face was all burn him up here, my head, my arm.”

Did you answer that?

A. No, I never said that.

Q. You didn't say that. All right.

The Court: Counsel, may I call your attention to the fact that Libelant's Exhibit 4, which is the hos-

(Testimony of Nino Tarantino.)

pital record, [225] has a notation on the first page:
"Flash burns on arm and face."

Mr. Nave: Very well, your Honor.

I have no further questions. Thank you.

Cross-Examination

By Mr. Silvers:

Q. Mr. Tarantino, you knew there was a gasoline tank on the dock, didn't you, from where the gasoline came?

A. The gasoline on the dock, yes.

Q. You knew there was a gasoline tank on the dock?

A. Yes, that's correct.

Q. When you say "From where you make gasoline," you mean from the dock?

A. Yes, that's right.

Q. Isn't that what you mean?

Mr. Nave: I object to that, if your Honor please, that is improper cross-examination.

The Court: Overruled. We will permit it in view of the witness' limited acquaintance with the language.

Q. (By Mr. Silvers): You saw the fire coming from where they make gasoline on the dock, isn't that right?

A. From the dock it come, the fire. I don't know from where. I see it all go foolish. I no know where it came from.

Mr. Silvers: I have no further questions. [226]

The Court: Any redirect?

(Testimony of Nino Tarantino.)

Redirect Examination

By Mr. Vartan:

Q. Counsel read certain portions of the deposition, page 52, line 16:

“Question: Did you give”—in the same subject that counsel pointed out in the deposition, Mr. Tarantino, did you give this answer to this question?

“Question: Right. Now, when you looked and saw the dock all on fire were you lying on the deck or had you gotten up?

“Answer: When the dock is explode up, boat explode up, what’s the—I don’t know what’s the matter, I get up, I can’t open my eyes.”

Did you give that answer to that question?

A. Yes.

Q. In other words, you saw the dock fire first?

A. Yes.

Q. And several minutes later when you were in the skiff leaving——

Mr. Nave: I object to the wording, leading and suggestive——

Mr. Vartan: Well, we are under difficulties.

The Court: Overruled. This man is a seaman, he is [227] a ward of the court. I am going to permit considerable liberality.

Q. (By Mr. Vartan): Mr. Tarantino, the first explosion happened, you fall down, right?

A. Yes.

(Testimony of Nino Tarantino.)

Q. When did you see the fire on the dock, when you were still down or when you were getting up?

A. No, when it was, when I get up, after five, six minutes, the boat is all done, the power house.

The Court: The witness is testifying that after he was thrown to the deck by the explosion, he laid there and twisted for several minutes, is that correct?

The Witness: That's what I——

The Court: You went to the deck?

The Witness: Yes.

The Court: And you lay there?

The Witness: Yes.

The Court: And you don't know how long you lay there?

The Witness: No, I don't know.

The Court: When you get up you got the pain in the face, pain in the elbow, pain in the back?

The Witness: I can't move.

The Court: And then you look and that's when you see the fire? [228]

The Witness: That's right.

Mr. Vartan: All right.

Q. (By Mr. Vartan): Now, where was the fire that you saw then? A. I see first on the dock.

Q. All right. You were still on the boat when you saw the fire on the dock. You are sure of that?

A. Yes, I was in the boat.

Q. All right. Then you left the boat and you got into the skiff? A. The skiff.

Q. The skiff. And you were leaving the boat?

(Testimony of Nino Tarantino.)

A. I leave the boat.

Q. When you were leaving the boat, did you see fire on the Santa Lucia?

A. Yes, all afire.

Q. How far were you away from the Santa Lucia when you first saw fire on the Santa Lucia?

A. Oh, I don't think very far. (Further remarks unintelligible to the reporter.) Joe is dead.

Q. One of the attorneys, Mr. Tarantino, they read something in the deposition where you said something about the gasoline tank exploding. Did you see the gasoline tank of the Santa Lucia explode? Did you know it was a gasoline tank?

A. I don't know what—— [229]

Mr. Nave: Objected to, your Honor, as leading and suggestive.

The Court: Yes, I am going to sustain that.

Mr. Vartan: Well, our position——

The Court: This man knows what a gasoline tank is, he has been around, told us how you mustn't smoke when gasoline is being loaded.

How many gasoline tanks are on the Santa Lucia? How many?

The Witness: One, one smaller tank, 30 gallons.

The Court: One small tank, 30 gallons.

The Witness: That is right.

The Court: Any big tank?

The Witness: No.

The Court: Only one?

The Witness: Only one.

(Testimony of Nino Tarantino.)

The Court: Where was that on the ship?

The Witness: She sank—I say Frank get the hose.

The Court: No, where was the tank on the ship, where was the gasoline tank?

The Witness: Down below.

The Court: Down below. Below what part of the ship?

The Witness: I don't know.

The Court: You don't know. You know if there were two tanks on the ship? [230]

The Witness: No.

The Court: You don't know. Okay.

Mr. Vartan: It will be admitted, counsel, this is a Diesel fuel vessel; the gasoline tank is an auxiliary tank, your Honor.

The Court: There was another tank aboard the ship?

Mr. Vartan: But not gasoline, your Honor.

The Court: Diesel oil?

The Witness: Diesel oil.

Mr. Vartan: Large tanks were for Diesel oil?

The Witness: No gasoline.

Mr. Vartan: No gasoline.

The Court: Any kerosene, have kerosene on the ship?

The Witness: What you mean?

The Court: How you cook, how do they cook?

The Witness: They cook with the Diesel.

The Court: How they cook in the galley, what did he use to cook with?

(Testimony of Nino Tarantino.)

The Witness: Diesel.

The Court: Diesel oil.

The Witness: Yes, Diesel.

The Court: All right.

Q. (By Mr. Vartan): Now, you said it was stupid to cook when making gasoline. Now, when this Santa Lucia was making gasoline, did you see [231] anybody actually cooking food in the galley? A. No, no cooking.

Mr. Nave: I object to that type of examination. The witness stated he wasn't in the galley at any time.

The Court: Well, he can say what he saw. Overruled. He has answered, and he says no.

Mr. Vartan: That's all, now. How do you feel now?

The Court: All right, thank you.

(Court speaking to the witness in Italian.)

The Court: You didn't know I spoke Italian, did you?

Mr. Vartan: Still don't, your Honor. I can't understand it. We will all be talking like Nino before long.

The Court: Now, you want to take the recess for lunch?

Mr. Vartan: Yes.

The Court: How long will you gentlemen take for lunch out here? You want an hour and a half?

Mr. Vartan: I think 2:00 o'clock today, we

are running faster than we thought with these witnesses.

The Court: You are going to run faster in the future. I tell you what I suggest, come inside in chambers—we will adjourn 'till two, but come in chambers, I would like to talk to you lawyers a moment.

(Thereupon an adjournment was had until 2:00 o'clock p.m. this date.) [232]

Afternoon Session—2:00 o'Clock P.M.

Mr. Vartan: Your Honor, I am sorry we didn't catch you before you took the bench. We wanted to talk to your Honor about certain matters before court convened.

The Court: All right, we will go across the hall to chambers.

(Short recess.)

The Court: I understand that counsel wish to place upon the record disposition of the four libels filed on the so-called wage claims.

Mr. Vartan: Yes, your Honor, counsel for Libelants and counsel for both Respondents, rather, Union Oil and Cardinales, have agreed that the wage claims in this matter involving Horace Adagio, Francois Cardinale, Sal Romeo and Joseph Romeo may be compromised and disposed of for a sum payable to each in the sum of \$125.00.

The Court: Is that approved by both of the Respondents, consented to?

Mr. Silvers: Yes, it is.

The Court: The Court has examined into these claims. They are not really wage claims; they are claims filed by these seamen for the benefits of, say, contractual obligations which the ship had incurred to them in reference to voyages which were to be taken in the future, fishing voyages of short duration. [233]

I have examined into these claims and I feel that these settlements which have now been reached are fair, just and equitable, and accordingly the Court then will sign a decree dismissing these libels upon consent upon payment to the Libelant in each case of \$125.00 each.

So that we may have it upon the record, that will be in File No. 27156, which is the libel filed by Joseph F. Romeo against Union Oil Company of California, Frances E. Cardinale and Idalene Jenner Cardinale, et al.; File No. 27157, which is the libel filed by Salvatore Romeo against the same Respondents; and File No. 27158, which is the file number of a libel filed by Francois Cardinale against the same Respondents; and File No. 27159, which is the file number of the libel filed by Horace Adagio against the same Respondents.

These suits are now marked settled, a decree will be signed by the Court dismissing these libels upon the merits upon payment of \$125.00 to each of the Libelants.

All right, proceed now with the other trials which we have before us.

Mr. Vartan: The Libelants will call Sal Romeo to the stand, please.

The Court: I understand it is further understood by the settlement of these suits, the Respondents are not deemed to have admitted any liability on either of these claims or any other claims, and the settlements are not to be considered [234] by the Court in any way as an admission of liability with respect to the other libels which are filed. Is that the understanding?

Mr. Vartan: Yes, your Honor.

Mr. Silvers: Yes, your Honor.

SALVATORE ROMEO

called as a witness on behalf of the Libelants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name to the Court?

The Witness: Salvatore Romeo.

Direct Examination

By Mr. Vartan:

Q. Mr. Romeo, what is your age, please?

A. 61.

Q. What kind of work have you done during your lifetime? A. Fishing.

Q. That has been your main livelihood, has it?

A. Yes.

Q. On September 28, 1954, the day when the Santa Lucia had this difficulty at the Union Oil dock, were you employed on the Santa Lucia. [235]

(Testimony of Salvatore Romeo.)

A. I was the fishing captain.

Q. You were the fishing captain. And who was the owner and operator of the boat?

A. Cardinale.

Q. That's Frank Cardinale?

A. Frank Cardinale.

Mr. Vartan: With your Honor's permission, we will omit the preliminaries and get to the meat of the thing.

Q. (By Mr. Vartan): As the Santa Lucia reached the gasoline dock, where were you?

A. On the wheel.

Q. Where was Frank Cardinale?

A. On the control.

Q. He was right next to you?

A. Next to me, yes.

Q. Who asked you or directed you to bring the Santa Lucia to the gas dock?

A. Frank Cardinale.

Q. All right. As the Santa Lucia approached the main wharf, not the gas dock, but the main wharf——

A. Yes.

Q. ——of the Union Oil Company, did Frank Cardinale say anything to anybody on the Union Oil wharf?

A. What do you mean? [236]

Q. I mean, did he ask for anything when he first saw the man at the big part of the wharf?

A. He asked for gasoline.

Q. Did he say how many? A. 30 gallons.

Q. After that, your vessel tied up, did he not?

A. That's right.

(Testimony of Salvatore Romeo.)

Q. After the vessel tied up, where did you go?

A. On deck.

Q. What was your purpose in going on deck?

A. Talk with the fishermen.

Q. You mean the crew?

A. The crew, yes.

Mr. Nave: Your Honor, may I have permission to sit up here?

The Court: Yes, surely, come right over.

Q. (By Mr. Vartan): When the Santa Lucia tied up at the gas dock, did you hear Frank Cardinale have any talk or conversation with anybody on the gas dock before the hoses were handed down?

A. He asked the guy for 30 gallons of gas.

Q. What did the guy say?

A. He said, "Do you got any credit card?" And Frank, he handed it to him.

Q. And then what happened? [237]

A. And he handed the card, it was expired.

Q. The card had expired?

A. Expired, so he told him, "I pay cash." After that he say, "Okay, okay."

Q. The Union Oil man said "Okay, okay." You offered to pay cash if the credit had expired?

A. That is right.

Q. Later on did the man on the Union Oil dock say Cardinale's credit was okay? A. Yes.

The Court: Now, what did you see happen, what happened after that? Tell us.

The Witness: Wait a minute. What you mean?

The Court: You pulled up to the dock.

(Testimony of Salvatore Romeo.)

The Witness: We tie up.

The Court: You tie up?

The Witness: That is right.

The Court: Frank asked for gas.

The Witness: Yes.

The Court: Handed him credit card.

The Witness: Yes.

The Court: Now, tell the rest of the story.

The Witness: Well, I went up on deck. You understand what I mean?

The Court: (Court talking in Italian.) [238]

The Witness: I went on the deck, I talk to the crew, to wash the boat. Frank came up to get the gas.

After that, about ten minutes, I hear the gasoline man, he holler, "Frank, I give you fifty-eight and a half gas." And Frank hollered, "Jesus Christ, what hell you doin' with the gas?"

Q. (By Mr. Vartan): Wait awhile. Wait awhile.

The Court: He is doing very well.

Mh. Vartan: All right.

The Witness (Continuing). And myself, I was like this, I turn around, I don't see nobody——

The Reporter: I am sorry. I didn't hear that.

The Court: "I was like this (in a crouched position), I turned around, I didn't see anybody, but I only heard a voice."

The Witness: That's right. After that, two minutes, boat go away, boom—boom. I don't know anything about it.

(Testimony of Salvatore Romeo.)

Q. (By Mr. Vartan): How many booms?

A. Two times.

Q. How much time passed between the first boom and the second boom? You say two booms and then you wait between the booms just like you heard it, so the Judge can know? [239] A. Yes.

Q. Now, take your time and figure out how much time between the two booms.

A. Only a second boom, boom ba-boom, and then the house come over on top of me. The only thing that saved me was the door.

The Court: What came with the door? The door hit you?

The Witness: The door saved me.

The Court: Oh, the door saved you.

The Witness: Otherwise, I was all to pieces, because the whole power house, the cable, net, and everything, was on top of me. Everything was just like that (indicating).

The Court: Indicating crouched and bent down.

The Witness: After two minutes like that I hear the cook holler, "Help me, help me," he can't get out. I take one hand like this, take it out and——

The Court: He says, "I helped myself like this," indicating still crouched over in a crouched position, and moving his left hand as if to move some debris or material from his left side.

The Witness: That's right.

The Court: Go ahead. What happened then?

The Witness: After that the cook go away, I run myself, too. [240]

(Testimony of Salvatore Romeo.)

The Court: After that the cook went away and you, too, ran.

The Witness: I run, too.

The Court: Where did you run?

The Witness: As soon as I leave the hatch—as soon as I reach the hatch——

The Court: As soon as he reached the hatch.

The Witness: The hold with the fish——

The Court: As soon as he reached the hatch, the hold where they put the fish.

The Witness: ——I see one man with the head inside the hold, his feet on deck with the bell on top, and I help myself go to bring down the skiff.

The Court: You helped to pull the man you saw that way into the skiff. Where was the skiff?

The Witness: The skiff was on the water.

The Court: What part of the ship?

The Witness: On the stern.

The Court: On the stern. Okay, what happened?

The Witness: After that, when I put on the deck the boat go down. It was all fire, can't hold it, I hold myself on the rail to go on the stern, it was about two feet up and the bow was down.

The Court: The bow of the ship was down, I held onto the rail in order to go along. [241]

The Witness: Yes, I help myself on top to go on the skiff, too.

The Court: In order that I could go down to the stern of the ship and then get into the skiff.

The Witness: That is right.

(Testimony of Salvatore Romeo.)

The Court: From the stern. Did you have this man with you all the time?

The Witness: No, I can't hold him no more, otherwise I am dead myself. There was fire there, it was on the water, I have to hold myself to go there, you see, because the boat was like this. After that it make like that, you know, stand up.

The Court: The boat was, indicating at a——

The Witness: The bow, it go down.

The Court: The bow of the ship went down and indicating that the deck of the ship was at a sharp angle to the surface of the water.

The Witness: That's right.

The Court: And you had trouble then walking along the deck because of the angle and pitch.

The Witness: Can't walk on the deck, you have to hold yourself.

The Court: You couldn't walk on the deck. Who was this man that you pulled out of the hold, out of the hatch?

The Witness: I don't know what his [242] name is.

Mr. Vartan: I can help you——

The Witness: I don't know who——

Q. (By Mr. Vartan): Is that the man who died? A. Yes.

Mr. Vartan: That, your Honor is Jacques Cardinale, the decedent, in whose behalf suit is filed here. That's the boy from Algiers.

The Witness: Yes.

Q. (By Mr. Vartan): Jacques Cardinale?

(Testimony of Salvatore Romeo.)

A. Yes.

The Court: Go ahead, counsel.

Q. (By Mr. Vartan): Now, did you notice any fire on the gasoline dock?

A. I can't tell you that; the fire on the boat, I know that.

Q. When was the fire on the boat?

A. As soon as the boat go down, there was fire on top of the water, and I can't say that, I don't know how they come.

Q. Well, was the fire on the boat after you get off on the skiff, then you see the fire on the boat?

A. No, I was on the boat when—that's why I run.

Q. I see. Now, did you look at the dock to see if there was fire up there? [243]

A. No, I no look.

Q. You were busy?

A. I was busy to save myself. I jump in the water or overboard to the skiff, one of the two.

Q. Did you see Frank Cardinale after he take the hose, put the end of the hose in the——

A. On deck.

Q. On deck?

A. In the hole.

Q. And then after that did you stand there and watch him?

A. No, I no see him any more after that.

Q. You didn't see him any more after that.

Mr. Vartan: You may cross-examine.

(Testimony of Salvatore Romeo.)

Cross-Examination

By Mr. Nave:

Q. Mr. Romeo, how long had you been the fishing captain on the Santa Lucia before this explosion, how many years or how many months?

A. I think it was about five months, five or six months; I am not sure.

Q. Five or six months before this explosion?

A. Yes.

Q. Did you operate at any time the engines, did you run the ship?

A. No, I don't know nothing about the engines, I never go [244] down.

Q. Did you ever go down in the engine room? Did you ever see the big engines and the auxiliaries, electrical connections down inside the boat?

A. If I go down there, I still don't know anything about it.

Q. You were never down in the engine room at all? A. No.

Q. At any time. All right. Did you ever take gasoline aboard the ship yourself, did you ever handle the gasoline hose and fuel the gas tank?

A. No.

Q. At no time. Now, during the month this accident, this explosion happened, in September, 1954, did you at any time during that month of September before this explosion, do any repair work on the Santa Lucia? A. You mean on the boat?

(Testimony of Salvatore Romeo.)

Q. Yes. A. No.

Q. Did you ever do any painting?

A. No, no painting.

Q. Did you ever do anything with the electrical fixtures, electric wires, anything like that? Did no work on them? A. I don't know.

Q. Did you see the work done on it? [245]

A. No.

Q. By anybody? A. No.

Q. Now, during that month of September, the month of this explosion, were you out fishing from time to time in the ship? Did you go out fishing in September before this explosion?

A. We was, the boat was tied up, the bank, they want to take it off the boat. There was two guys there to watch the boat. I don't know what they do; they say they fix it, the engine.

The Court: When was that that you had the engine——

The Witness: I think it was a month before that.

The Court: The ship pulled up and put on land and scraped? Did you go in any yard and pull your ship out of the water at any time during the five months you worked aboard?

The Witness: I don't know, maybe the owner of the boat take care of that. I don't know.

The Court: Do you know whether it was done?

The Witness: No, I don't know.

The Court: Do you know whether they took the ship out of the water?

(Testimony of Salvatore Romeo.)

The Witness: No, I don't know.

The Court: Do you know how long the ship was laid up while these men were fixing the engine? Was your ship laid up while they fixed the engine? [246]

The Witness: No, they tie it up on the wharf.

The Court: How many days? How long?

The Witness: About two weeks or twenty days.

The Court: When was that?

The Witness: I don't know what months it was.

The Court: Was it in the summer time?

The Witness: That's the time we go anchovies. Anchovies.

The Court: Anchovy time? Or before anchovy time?

The Witness: Anchovy time.

The Court: So you didn't use the ship for two weeks during anchovy time?

The Witness: What?

The Court: You say your ship was tied up at the wharf?

The Witness: Yes.

The Court: While there was some repairs being done?

The Witness: No, no, no repairs; no repairs.

The Court: No repairs.

The Witness: No repairs, the bank want to take it away, the boat.

The Court: The bank wanted to take it away. Oh.

The Witness: It was tied up on the wharf, but no repair. [247]

(Testimony of Salvatore Romeo.)

The Court: The bank had a mortgage?

The Witness: That's right.

The Court: Oh, I get it. The bank put a watchman on it.

The Witness: That's right.

The Court: And the crew get him off?

The Witness: Everybody was off.

The Court: Everybody off, the bank on the ship?

The Witness: That's right.

Q. (By Mr. Nave): So you don't know of any repairs that were made on the fishing boat during the month of September, 1954; as far as you know, none were made?

A. No, I don't know. I don't know.

Q. Thank you. Now, as you came into the—strike that.

Are you familiar with the galley where the cook stove is? Have you been in the galley where they fixed the meals, haven't you?

A. In the kitchen, you mean?

Q. Yes. A. Yes.

Q. Were you in there at any time the day of this explosion?

The Witness: You mean what day what?

Q. The same day the boat blew up, were you in the kitchen at any time that day? [248]

A. Yes.

Q. When were you first in there? Were you there that morning early?

A. Yes, it was in the morning, and noon time. We get coffee.

(Testimony of Salvatore Romeo.)

The Court: Were you going to eat your supper on ship?

The Witness: Yes.

The Court: What time do you get supper, Captain?

The Witness: You mean noon time?

The Court: No, night.

The Witness: Night. We haven't got to cook it, it is all ready to eat, but we wait to get away from the wharf.

The Court: What time do you eat at night?

The Witness: Depend, 5:00 o'clock, 6:00 o'clock, 7:00 o'clock, it depend on what time we go to work.

The Court: The cook was all ready——

The Witness: He got everything ready.

The Court: How do you know? How do you know he had everything ready?

The Witness: He say so, they have steak, we have the steak all ready and on the table, but never cooked yet, but we wait, everybody want a table.

The Court: Go ahead, counsel. [249]

Q. (By Mr. Nave): Are you familiar with the stove that was in the kitchen?

A. What do you mean?

Q. You know there was a stove in the kitchen?

A. Oh, yes.

Q. That was where the coffee was made?

A. Sure, on a fishing boat the coffee is there all the time.

Q. Coffee all the time?

A. All the time.

(Testimony of Salvatore Romeo.)

Q. Hot coffee on the stove all the time, didn't they?

A. That's right.

Q. That coffee is heated on an open flame, a burner?

A. No, no, it's on top like that, you see, oil stove, you know.

Q. Oil.

A. You put on top here, any time the fishing men get in the kitchen and get a coffee.

The Court: Is it a kerosene oil stove?

The Witness: Oil.

The Court: Kerosene?

The Witness: Yes.

The Court: Have you got a kerosene tank aboard the ship?

The Witness: Same oil the engine burns.

The Court: The same oil the engine burns runs the [250] stove?

The Witness: That is right.

The Court: That's Diesel?

The Witness: Yes.

The Court: Have you got a tank for the Diesel oil?

The Witness: Two tanks.

The Court: Two tanks. Where are those tanks located?

The Witness: Each side of the engine room; one this side and one this side.

The Court: How big, how many gallons?

The Witness: I don't know, I can't tell you that.

(Testimony of Salvatore Romeo.)

The Court: Are the tanks connected with the pipe, do you know?

The Witness: Naturally it be connected with a pipe. How in the world they going——

The Court: Both tanks connected with a pipe from one tank with the other tank?

The Witness: One each side.

The Court: In a relay, yes.

The Witness: Sure.

The Court: Okay. Go ahead.

Q. (By Mr. Nave): Do you know how the Diesel oil went into the stove, how [251] it was connected to a tank?

A. I don't know that, I no engine man, I don't know anything about him.

Q. You don't know anything about it.

The Court: Who was the engineer on the ship?

The Witness: Frank Cardinale.

The Court: That is the man that is dead, is he?

The Witness: Yes, he was the owner, engineer, everything. He take care of everything; I take care of the net.

The Court: Who helped Frank with the engine? Who helped Frank on the engine?

The Witness: He alone.

The Court: He all alone?

The Witness: Yes.

The Court: Do you know where the engine that was run with the gasoline was located? You were taking on 30 gallons of gasoline?

The Witness: Yes.

(Testimony of Salvatore Romeo.)

The Court: What did you use the gasoline on the ship for?

The Witness: For the pump to wash the boat.

The Court: For the pump to wash the boat. How was your winch run, steam or engine?

The Witness: Engine, big engine. [252]

The Court: Gasoline?

The Witness: No, no, oil.

The Court: Oil. So the only thing that is run with the gasoline——

The Witness: Just the pump, when you need the pump.

The Court: Now, where is that pump? Where is the pump engine?

The Witness: The pump engine in the engine room.

The Court: How far away from the gasoline tank was the pump engine located?

The Witness: I don't know. I never see.

The Court: Do you know where the gasoline tank was?

The Witness: I think inside the engine room, but I don't know.

The Court: You don't know. Okay.

Q. (By Mr. Nave): Now, Mr. Romeo——

The Court: May I inquire whether there is a sketch or plan of this ship. There is none that shows the layout of this stuff? All right.

Mr. Vartan: Not so far as the Libelants are concerned. It is up to them.

(Testimony of Salvatore Romeo.)

The Court: I mean, you have no——

Mr. Vartan: No.

The Court: You haven't seen it. If you have one, [253] you'd better get it in evidence.

Mr. Silvers: It is available and the Libelants have seen it.

The Court: All right.

Mr. Vartan: Wait awhile. The Judge asked——

The Court: If there is a sketch of this ship that shows the layout of this equipment, it might be advisable for somebody, if they want to, to put it in evidence at an early date. I am not directing that be instituted, simply a suggestion which counsel can take or reject as they see fit. Go ahead.

Mr. Nave: Thank you, your Honor.

Q. (By Mr. Nave): Now, when the Santa Lucia came into the wharf to get gasoline, where were you standing at that time? Were you up in the bridge, pilot house? A. On the wheel, yes.

Q. On the wheel.

A. I was on the wheel and Frank was at the control.

Q. You were steering the ship?

A. I was at the wheel, yes.

Q. And Frank was standing there——

A. Alongside of me. The wheel is over here and the control is right here (indicating).

Q. And you heard Frank say something to the man on the service station dock? [254]

A. "Thirty gallons of gas."

Q. He said thirty gallons? A. Yes.

(Testimony of Salvatore Romeo.)

Q. That's all you heard? A. Yes.

Q. You went down on the deck? A. Yes.

Q. And you saw Frank getting the gasoline hose? A. Yes.

Q. You saw him put it in the fuel hole on the deck? A. Yes.

Q. And then you heard another conversation later in which the man up on the dock said, "You got fifty-eight and a half gallons of gas"?

A. Yes.

Q. Is that right? And what was it that Frank said?

A. He swear, "Jesus Christ, where the gas go."

Q. Where did the gas go?

A. And I turned around and I said—I don't see nobody, I just heard the voice.

The Court: He just heard the voice, he didn't see nobody.

The Witness: Because we, of course, work with the fishermen, he take care of all of it, all of that. It was inside the engine room. I don't see nobody, the voice, they [255] holler. After that, boom, no more boat.

Q. After you heard Frank say, "Where did the gas go?" did you see what Frank did then, Frank Cardinale? Did you see what he did? A. No.

Q. Did you see him go over on the other side of the fish boat?

A. I don't see, I no see nothing at all, I just heard the voice, that is all I see.

Q. Now, how long after you heard Frank say,

(Testimony of Salvatore Romeo.)

“Where did the gas go?” was the boom-boom?

A. After two or three minutes.

Q. Two or three minutes?

A. Maybe five minutes, I don't know, I can't judge myself the time.

Q. You hear the boom-boom, like you said, and the ship blew up, the boat blew up, is that right?

A. Yes.

Q. And the whole part of the hull came down on top of you? A. Whole power house.

Q. The whole what, sir?

A. Powerhouse.

Q. The powerhouse, the pilot house?

A. We say the house.

Q. That was right after the boom-boom the pilot house came [256] down on top of you, is that right?

A. (Witness nodding.)

Q. You said, I believe, a door saved you?

A. Yes.

Q. Will you tell me, please, what door it was that saved you and how it fell on you; what door was it?

A. The toilet door. See, like this, the toilet, and this is the kitchen (indicating).

The Court: Indicating——

The Witness: I was like this (indicating).

The Court: He puts his back to the wall and he says in back of him is the toilet door and to his left is the door to the kitchen.

The Witness: I face this way (indicating).

Q. (By Mr. Nave): If I understand you are

(Testimony of Salvatore Romeo.)

referring to the photograph, Respondent's Exhibit A, Cardinale, of the picture of the fishing boat?

A. Yes.

Q. You are speaking of the door that is on the fantail that goes into the galley?

A. It's two doors.

Q. Two doors?

A. Yes, one to the kitchen, one to the bathroom.

Q. And the one in back is the one you are talking about? [257]

The Court: The bathroom, the toilet. That was a toilet door?

The Witness: Yes, sir, he saved me, stay on top of me, otherwise I no here no more.

The Court: You say the deckhouse came down?

The Witness: That's right.

The Court: Just tell me what happened to that deckhouse. Did it fall to pieces?

The Witness: All to pieces, all come down. Nothing.

The Court: It wasn't pushed off altogether, was it?

The Witness: It was completely—break all to pieces.

The Court: The deckhouse was all broken to pieces?

The Witness: Yes. That's why the cook can't get out, I had to help him to get out, otherwise he would be dead.

Q. (By Mr. Nave): Then you helped the cook out of the cook house?

(Testimony of Salvatore Romeo.)

A. Otherwise he can't get out.

Q. All right.

Then at that time the fishing boat was sinking, going down? A. Yes.

Q. You saw the fire on the boat, then, didn't you?

A. Yes.

Q. Then you went on the skiff, is that [258] right? A. Yes.

Q. And you saw a fire on the water there?

A. (Witness nodding.)

Q. You stated, I believe, you couldn't walk on the deck?

A. No, I have to hold myself, otherwise I can't go.

Mr. Nave: I believe that is all. Thank you very much.

Mr. Silvers: No questions.

The Court: You have no direct? He has no questions.

Mr. Vartan: No, your Honor.

(Witness excused.)

Mr. Vartan: The diagram of the vessel, the Libelants, of course, didn't have that blueprint of the vessel. I understand the Respondents Cardinale have a witness who surveyed the boat who made a diagram, but in view of our theory of this, we don't think we should call their witness.

The Court: You don't have to call any witnesses you don't want to and you don't have to introduce

any exhibit in evidence, if you don't wish to. You try your own case your own way.

Mr. Vartan: Mr. Belleci, please.

The Court: That also applies to the other Proc-tors in the suit. [259]

ANTOINE BELLECI

called as a witness on his own behalf was duly sworn through the Interpreter to tell the truth, the whole truth and nothing but the truth, testified as follows through the Interpreter unless otherwise noted:

(Whereupon, Paul De Martini was sworn to act as Official Interpreter for the above witness and to translate from the English language into the language of the witness and from the language of the witness into the English language.)

The Clerk: Please state your name to the Court.

A. Antoine Belleci.

Direct Examination

By Mr. Vartan:

Q. Mr. Belleci, you are the Administrator of the Estate of Jacques Cardinale? A. Yes.

Q. Jacques Cardinale who lost his life in this occurrence was related to you?

A. He is married to my wife's sister.

Mr. Vartan: At this time, your Honor, we would——

The Court: Any dispute about this man being duly appointed and qualified?

(Testimony of Antoine Belleci.)

Mr. Silvers: No, your Honor.

The Court: Authorized to act as the Administrator of the Estate of Jacques Cardinale? [260]

Mr. Silvers: No, sir.

The Court: Very well.

Mr. Vartan: I take it we won't need to introduce the certified copy of the Letter.

The Court: Not with this concession.

Mr. Vartan: Very well. I have shown counsel, for the record, a statement from the Mission Mortuary——

The Court: Funeral bill?

Mr. Vartan: Funeral bill, Monterey, California.

Q. (By Mr. Vartan): I ask you, Mr. Belleci, to look at that and state whether or not the items on that bill were incurred in the preparation of the body of Jacques Cardinale for the funeral in Monterey, and also for sending the body back to Algiers?

A. Yes, I paid this bill, \$1,148.23.

The Court: \$1,148.23. Is it conceded that that is a reasonable charge for the services rendered?

Mr. Silvers: Yes, your Honor.

Mr. Nave: Yes, your Honor.

The Court: A seaman is entitled to be returned to his home town.

The Witness: And there is an item here at the bottom of \$769.00 that is still due.

Q. (By Mr. Vartan): In addition to the amount that was mentioned? [261]

A. Yes, in the amount of \$769.00, is still due.

(Testimony of Antoine Belleci.)

Mr. Vartan: I think there is an explanation there on the bill, your Honor.

The Court: \$1,148.00 apparently did not include the steel sealed casket and the outside shipping box, for which an additional charge of \$769.00 was made, but not yet paid. That would be a total, then, of \$1,917.23; preparation of body, funeral services and shipping back.

Is it conceded by both sides that is a reasonable charge for the services rendered?

Mr. Silvers: Yes, your Honor.

Mr. Nave: Yes, your Honor.

Mr. Vartan: We offer that, then, as Libelant's Exhibit next in order, your Honor.

The Clerk: That will be Libelant's Exhibit 5 introduced and filed into evidence.

(Whereupon, the foregoing bill for funeral of Jacques Cardinale was marked Libelant's Exhibit No. 5 and received in evidence.)

Q. (By Mr. Vartan): Now, Mr. Belleci, how old are you?

A. 53. I will be 54 years old on the 26th of September.

(The Court and the witness speaking in Italian.)

Q. (By Mr. Vartan): How many years have you lived in Monterey? [262]

A. I went down there the first time in 1928.

Q. How long did you stay at that time?

(Testimony of Antoine Belleci.)

A. Three years.

Q. And then you returned the second time?

A. Yes. I returned down there, I think—I didn't return down there in 1941 because the war had broke out, but I went down there in 1946 or 1951, and I returned down there in 1948 and then I went away and I went back there in '52.

Q. I see. Now, what has been your business or occupation during your lifetime, Mr. Belleci?

A. I have always been a fisherman.

Q. On September 28, 1954, were you employed on the Santa Lucia? A. I was the cook.

Q. I see. How long had you been on the Santa Lucia?

A. Since 1948. When I went back to France and returned, they always had the place open for me.

Q. Now, calling your attention to when the Santa Lucia tied up at the gas dock, did you see Frank Cardinale after the ship was tied up? A. No.

Q. Did you, while the ship was tied up there, and before anything unusual took place, observe a man on the gasoline dock?

A. No, I was in the kitchen doing my work.

Q. All right. [263]

Tell the Judge what you were doing in the kitchen during the time, well, before we ask you that—strike that.

Do you know about how many minutes took place or elapsed from the time the Santa Lucia tied up at the gas dock and until an explosion took place?

A. I had prepared the dining table, or had set it,

(Testimony of Antoine Belleci.)

and then I had made some French fries and then I had finished making the French fries and then I had breaded the meat. We were still alongside the wharf at that time.

Q. Let me ask you—were you through, Mr. De-Martini?

The Interpreter: Sir?

Mr. Vartan: Were you through?

The Interpreter: No, he isn't through yet.

A. (Continuing): When I got through breading the meat, we were still alongside the wharf. And I turned around and I went to work and finished setting the table, plates and knives and forks, and so forth, and I turned around to the buffet to get the pepper and salt shaker, and as I reached up there to get it, I heard the explosion.

The Court: Did he say he was making frigadella (sic)?

The Witness: Frigadella?

The Court: Chopped meat.

The Witness: Frigadella is liver, isn't it? These were steaks, breaded steaks.

Q. (By Mr. Vartan): [264] Now, you mentioned you had finished the French fries. When had you cooked the French fries?

A. Oh, I had finished cooking them about 25 minutes or a half hour.

Q. Before? A. Yes.

Q. Before what?

A. Before going to the wharf.

Q. I see.

(Testimony of Antoine Belleci.)

A. Because the ship was traveling along slowly because they were washing down decks.

Q. Mr. Belleci, will you explain what type of a stove you had in that galley?

A. A stove like on all vessels. The top of it was a solid plate with the exception of a small hole where you lit the stove.

Q. There were not, then, any separate burners like you see in a kitchen stove?

A. No, no, no.

Q. Now, this plate, this metal plate, will you please tell us how large that was? First, the width and then the length.

A. It was about as long as my both outstretched arms.

The Court: About five feet by about two and a half to three feet in width. [265]

The Witness: And about two feet, indicating about two feet wide.

Q. (By Mr. Vartan): Mr. Belleci, how was that—strike that. When you want to cook anything would you put it on that plate? A. Yes.

Q. All right. Now, was there any burner or burners under that plate?

A. If I wanted to increase the heat under that plate, why, I would turn a valve up a little bit and the flames would spread out all over underneath that.

Q. All right. What I was interested in now is, was there one valve, one burner?

A. There is only one.

(Testimony of Antoine Belleci.)

Q. I see. When you came into the gasoline dock, was that plate, that stove that you had there, hot or cold? A. It was absolutely cold.

Q. When the top plate of this stove was cold, was there any flame underneath it? In other words, did you have a pilot light? A. A small pilot light.

Q. Have him show. Indicating about a half an inch high. Was that pilot light ever turned off on the Santa Lucia? A. No, that was always lit.

Q. Day and night? [266]

A. Yes. It worked very well.

Q. Had you worked on other vessels besides the Santa Lucia, other fishing vessels?

A. Yes. In 1956 I worked—'55 or '56, for the Pacific Star.

Q. Was this after this explosion or before?

A. (In English): Yes.

(Through the Interpreter): Yes, it was after the explosion. I was ill for a while and then I went to work on that vessel.

Q. Now, did you work on fishing vessels before you worked on the Santa Lucia?

A. Yes, I worked on board other vessels.

Q. Did you work on these other vessels before the Santa Lucia as a cook?

A. Oh, once in a while, a year, for instance, I would work as a cook, because there was too much work, and then probably two years I worked as a fisherman.

Q. Now, this stove that was in the Santa Lucia.

(Testimony of Antoine Belleci.)

was that built any different from any stove you had seen on fishing vessels?

A. No, the same as the other boats.

Q. And when you were a cook on the other vessels, was the pilot light left on day and night?

Mr. Nave: I object to that, if the Court [267] please. That is not material in this case.

The Court: Sustained. Was there a pilot on this stove on the Santa Lucia?

A. Yes, a very small pilot light.

The Court: What supplied the fuel for the pilot light?

A. The same oil that ran the engine.

Q. (By Mr. Vartan): Will you describe the burner on this stove? Tell us what it was like. Was it a torch burner, projected a flame under pressure, or was it a burner in which the oil came out in little holes?

A. No, it come very gradual. If I turned it on, just like up a little more, and if I turned it down a little bit, it would reduce the flame.

The Court: So that if you wanted to turn the stove on and get the flame, you would open up a little valve that would let the oil flow through?

A. Yes.

The Court: And the oil that came through when you opened the valve was ignited by the pilot light, is that right?

A. The oil came piped up from below and came and was lit by the pilot light and if I wanted to increase the flame under the plate, why, I would turn it up or down.

(Testimony of Antoine Belleci.)

The Court: Did he say little by little? [268]

The Interpreter: Yes.

The Court: Little by little. And when you wanted to turn the stove off, you shut the oil off by turning the valve back?

The Witness: Yes.

The Court: Now, that turned off the big flame, but that did not interfere with the pilot light?

The Witness: No, it would shut off the flame that would come up under the plate and that little pilot light would just keep a little heat under the stove at all times.

The Court: Was that pilot light on all the time while you were out on the ship, or did you have a valve by which you could turn the pilot light off?

The Witness: Of course, when we were working, it was always lit, but if we were ashore for two or three days, then I would turn the valve off and shut that pilot light off.

The Court: Now, was this pilot light on during all the time after you made these French fried potatoes and while you were waiting until it was time to cook the steak?

The Witness: Yes.

The Court: How big was that pilot light? Can you show me with your fingers about how big a flame it was?

The Witness (Indicating): This way.

The Court: Indicating about a quarter of an inch. And did it come out through a little [269] spout?

(Testimony of Antoine Belleci.)

The Witness: Yes, a small hole, and as I would open it up, the flame would raise a little higher.

Q. Now, so that to turn on the stove, you would raise and open up the pilot light and make a bigger flame on the pilot light?

A. When I would open up the pilot light to light the burner to heat the plate (and the witness indicates about one and a half inches high). That inch and a half flame would only come out one little hole in the pilot light and that would light a flame that remained in there and would light all under the plate.

The Court: Do you know the type of stove you had in this galley, or in the kitchen, what make it was, the manufacturer?

The Witness: I don't know, something was written there, Flegg, I can't tell you that, but the company knows what it is.

The Court: Okay.

Q. (By Mr. Vartan): The stove had a brand on it, did it not, showing that it had been manufactured by some company? A. Yes.

The Court: He said it did, but he didn't remember the name.

Mr. Vartan: Oh, I am sorry. [270]

The Court: He thought it was Flag something, but he wasn't sure.

Mr. Vartan: All right.

Q. (By Mr. Vartan): Still on the subject of this stove, did Frank Cardinale—who was your boss on that vessel?

A. I knew the boss as Frank Cardinale.

(Testimony of Antoine Belleci.)

Q. Now, when you went into this wharf or gas dock to take on gas, did Frank Cardinale tell you to turn off the pilot light under the stove?

A. No, nothing.

The Court: Where was the hole where they put the gasoline hose on the deck?

The Witness: I don't know. I was in the kitchen working.

The Court: Don't you know where the hole to the gasoline tank was?

The Witness: I don't know, it was on the port side of the vessel, but I don't know, they were working around there, I don't know whether it was up towards the bow or to the stern, because there are the connections there for the oil, there is the gasoline connections. I don't know.

Mr. Vartan: Before I get into the medical phase, may we have the customary recess?

The Court: Sure. How long do you want? [271]

Mr. Vartan: Ten minutes.

The Court: You tell me when.

(Short recess.)

Q. (By Mr. Vartan): Will you please tell us what was the menu for dinner that night?

A. T-bone steak.

Q. Anything else?

A. Salad and French fries.

Q. Now, you have already told us you were not cooking the French fries when the boat was at the gas dock?

A. Yes.

(Testimony of Antoine Belleci.)

Q. Did you have the steaks out of the refrigerator?

A. I had already breaded the beeksteaks and placed them in a tray and set them on the wash stand or sink.

Q. Had you been given any instructions as to any particular time when dinner should be ready that night?

A. Yes, they had to wash up and clean the oil and dirt off of themselves, because they probably clean fish, one thing and another. I have orders to prepare the dinner for six or half-past six, around about that hour.

Q. Now, what injuries did you sustain in the explosion?

A. I had an injury to the left side of my head above the left ear. I had my right arm—my right arm was swollen (witness indicating around the region of the elbow), and I had my [272] ribs and my back were injured.

The Court: Did you go to the hospital?

The Witness (In English): Yes.

Mr. Vartan: I was just showing counsel the records, which probably will shorten this.

The Court: While he is looking at that, let me ask you a question:

What were your wages on the ship?

The Witness: We worked on shares.

The Court: Go ahead.

Q. (By Mr. Vartan): How much per month during the anchovy fishing season were you making?

(Testimony of Antoine Belleci.)

A. In four or five months, depending upon the catch, would make \$2,500.00, \$3,000.00.

Q. That's in how many months?

A. Four or five months.

Q. Where was this crew, where was the Santa Lucia going from Avila after this day?

A. The next day the cannery wanted more anchovies and we were to go out the next day.

Q. When did the sardine season start?

A. The first of October.

Q. That would be just a few days later?

A. Yes. [273]

Q. And it was the same crew on the Santa Lucia that was going to go sardine fishing?

A. The same crew.

Q. And how many months would the sardine fishing last, then?

Mr. Nave: Object to that, because that is speculative, conjectural.

The Court: Overruled. I will take it. I don't know whether it is going to be material or not.

The Witness: From the first of October until the latter part of February or first of March. Anyway, it would last up to the month of March.

Mr. Vartan: At this time, your Honor, I would like the record to show that I have shown both counsel the photostatic records of the French Hospital, covering Mr. Belleci, and also a statement of Frank P. Cazenza, M.D., Monterey, California; also a statement from two doctors at the San Luis Clinic, and

(Testimony of Antoine Belleci.)

we offer them at this time as Libelant's Exhibit next in order.

The Clerk: Libelant's Exhibit 6 introduced and filed into evidence.

The Court: Any objection?

Mr. Nave: I have no objection.

Mr. Silvers: No objection.

The Court: Then by consent—and do we have the [274] stipulation that the bill charged here of \$165.50 is a reasonable bill?

Mr. Nave: I will so stipulate, your Honor.

Mr. Silvers: Yes.

The Court: You go ahead, counsel.

(The records of the French Hospital for Mr. Antoine Belleci and statement of F. P. Cazenza, M.D., were marked Libelant's Exhibit No. 6 and received in evidence.)

Mr. Vartan: All right.

Q. (By Mr. Vartan): Now, how long were you in the French Hospital, Mr. Belleci?

A. I don't know, I think about four or five days.

Q. From there where did you go?

A. Monterey.

Q. Was that your home? A. Yes.

Q. When you got home, what did you do?

A. I remained there, my sister came down and she took me to the doctor's.

Q. I see. Were you in bed during the days when you first returned to your home?

(Testimony of Antoine Belleci.)

A. Yes, I remained abed, because I couldn't walk.

Q. What bothered you when you walked?

A. My back here was all black and blue (and the witness [275] indicates the small of the back).

Q. You mentioned that your sister took you to a doctor; in Monterey, I assume?

A. Yes, with the automobile.

Q. Who was that, was that Doctor Frank P. Cazenza?

A. Yes.

Q. And the times that you saw the doctor are set forth on the statement that he sent you, is that right?

A. Yes.

Mr. Vartan: We can cut it short, your Honor.

The Court: When did you go back to work?

The Witness: I think I returned to work some five or six months after the——

The Court: Well, when, what date?

The Witness: I can't remember right now.

The Court: He can't remember it. He isn't making a good impression on me, counsel. He ought to know when he went back to work and how long he claims——

Mr. Vartan: Well, he told us, your Honor.

The Court: Refresh his recollection, if you want. Who did you go back to work for?

The Witness: I went back to work on Pacific Star.

The Court: When?

The Witness: I think it was the 15th of September.

(Testimony of Antoine Belleci.)

Q. (By Mr. Vartan): [276] What year?

A. I think September 15, '56.

Q. The accident, Mr. Belleci, happened in 1954.

A. Then I made a mistake. It is September 15 of 1955.

The Court: The record introduced in evidence shows Doctor Cazenza discharged him as cured on May 18, 1955, and Doctor Cazenza's bill shows no visits in February, only one visit in January, and four visits in April, four visits in May, no visits, February, March and April of 1955.

Look at that.

Mr. Vartan: Yes, I have seen it, your Honor.

The Court: When did you go back to work, when did you go back on a fishing trip?

The Witness (In English): 15 September, 1955.

Mr. Vartan: I think we can clear that up, your Honor. The seasons aren't always all year around, you see.

The Court: Yes, but he says that the season is up to the first of March, sardine season.

The Witness: No.

The Court: Just testified to that.

Mr. Vartan: No, we can explain that, your Honor, I am sure.

Q. (By Mr. Vartan): You explain why you didn't go back to work until September, and also explain if you don't start on a vessel at [277] a particular time, then you are not on a crew.

A. For a month or two there wasn't anything to do there at Monterey.

(Testimony of Antoine Belleci.)

Q. That's your answer.

A. And I signed aboard the Pacific Star to go to San Pedro.

The Court: Did you make income tax return, did you pay income taxes?

The Witness (In English): Yes.

The Court: You got a copy of the income tax?

The Witness (In English): No, I got it home.

Mr. Vartan: We will have it here, your Honor.

Q. (By Mr. Vartan): Now, did you wear any brace or corset on your back?

A. Yes, the doctor gave me one.

Q. How long did you wear that?

A. Two or three months.

Q. Did you wear that day and night, or only when you walked about?

A. No, I wore that corset when I was up and around. When I would go to bed, I take it off.

Q. Do you have any difficulty at all at the present time with your back?

A. When there is bad weather, then I have trouble with my back.

Q. Will you please point to the area? [278]

A. (Indicating): Indicating from the small of the back on the spinal column and up through the back of the head and base of the skull.

Q. Did Doctor Cazenza advise any particular care that you could give to yourself, to your back, after he discharged you?

A. He told me to take it easy and he said this is an affliction that will take some time to get rid of.

(Testimony of Antoine Belleci.)

Q. When you first went back to work for the Pacific Star, what type of work did you do?

A. Same, cook.

The Court: Are you working steady now, are you?

The Witness (In English): I work steady some time.

The Court: You feel well, do you?

The Witness (In English): Oh, yes.

(Through the Interpreter): Yes, I work pretty steady, but I must tell you that once in a while I am bothered, not so very heavily, but it bothers me sometimes when the weather changes.

Mr. Vartan: I have no further questions.

Cross-Examination

By Mr. Nave:

Q. Mr. Belleci, do you know whether or not there was any fuel tank in the kitchen?

A. There wasn't any.

Q. There was a small pipe then, from the stove that went [279] down into the engine room, is that where the fuel came from?

A. But the oil comes from above, the pipe, passes overhead.

Q. Then there is a fuel line that comes from the engine room up to the ceiling of the kitchen, is that correct?

A. Yes, the oil comes, the pipe comes up from below and goes up under the ceiling and then down to the stove, comes up under the stove.

(Testimony of Antoine Belleci.)

Q. Do you know how large that pipe was?

A. About the size of a spaghetti.

(The Court and witness speaking in Italian.)

The Witness: The large size of spaghetti.

Q. (By Mr. Nave): Can you tell me a quarter of an inch or a half inch?

The Court: About three-sixteenths of an inch, about.

The Witness: He said smaller than the handle of this little apparatus here, about one-eighth of an inch.

Q. (By Mr. Nave): Now, did you have any pump that made pressure to get the fuel oil up from below?

A. No, it came by itself.

Q. You don't know where the pressure came from that brought it up?

A. The boss, I guess, put it under pressure down below and that would bring the oil up.

Q. Now, you had hot coffee in the galley, didn't you? [280]

A. Yes, right on the corner of the stove.

Q. You kept a coffee pot on this burner, kept it hot, isn't that right?

A. Kept it on an apparatus there that would just keep the coffee warm, not hot.

Q. That was on the burner that had the flame?

Mr. Vartan: Mr. Belleci—excuse me, Mr. Nave. Will you ask the witness to wait until——

The Witness (Interrupting): It was on the corner of that plate on the stove.

(Testimony of Antoine Belleci.)

Q. (By Mr. Nave): Perhaps I didn't understand it. What I want to find out is what kept the coffee hot, where did the heat come from that kept the coffee hot?

A. Well, if the plate is warm and we have the coffee over this pilot light, it get too hot, we move it over on the the corner where it keeps a moderate heat, otherwise the coffee would become too black and too strong and you won't be able to drink it.

Q. But the coffee is heated on this burner, this pilot light burner you talk about?

A. Right close to it. Yes, right close to that pilot light, because if the plate is hot, it wouldn't make any difference where you put, because if the plate is hot, it wouldn't make any difference where you put it around there, you make the coffee. [281]

Q. All right. Now, did anyone come in the galley while the fishing boat was at the dock and before the explosion?

A. I didn't see anyone come there, but I think one of the seamen came in and took two or three French fries and went out, but I didn't see him go out. One of the fishermen.

Q. Was that Frank Pedrasaz?

A. Yes, the Frenchman.

Q. He came into the galley and snatched some French fries?

A. (In English): That's right, yes.

Q. Did you say anything to him?

A. I didn't see him.

(Testimony of Antoine Belleci.)

The Court: Were you operated on at any time for hernia? Ask him in Italian.

The Witness: No.

The Court: You got an operation——

The Witness (In English): Appendicitis, operation for appendicitis.

The Court: How long ago?

The Witness (In English): Oh, 1935, 1936.

The Court: Have you got a cut on both sides in here, two cuts? (Indicating.)

The Witness: Only one incision.

The Court: The hospital record shows healed scars right and left abdomen.

Mr. Vartan: I don't know. [282]

The Court: This is the hospital examination that is in evidence now.

Mr. Vartan: We are perfectly willing to have the man pull up his shirt, your Honor.

The Court: I am not a doctor.

Mr. Nave: Well, if they have scars——

The Court: Here is the record that says healed scars, left and right abdomen.

The Witness: I have a scar on my left side that came from a graft, that I had an injury to my finger, my right hand, and they took the skin off my abdomen on the left side here and put it onto the finger.

The Court: Were you ever in any other accident besides this?

The Witness (In English): No.

(Testimony of Antoine Belleci.)

The Court: How about the hand? What happened when you hurt your hand?

The Witness: I got it caught in the cable that was on the winch.

Mr. Nave: Shall I continue, your Honor?

The Court: Yes.

Q. (By Mr. Nave): Now, when this explosion took place, what happened, what actually happened when you felt the explosion?

A. I felt the blow and I was on the floor and I tried to [283] get up and I couldn't get up.

Q. Did the cabin blow up?

A. The buffet was there intact and the stove was intact, but I couldn't get up, and the superstructure over the galley, that all came down on me.

Q. Now, you heard one boom, one explosion?

A. I heard one boom.

Q. And then the superstructure fell on you, is that right?

A. Yes. I looked around to see what was around there and the stove was all intact and everything, but all this superstructure was on me.

Q. And did the door into the crew's quarters blow in on you?

A. Yes, struck me in the back and knocked me forward toward the radio.

Q. And you were knocked out, rendered unconscious?

A. Some ten or fifteen minutes, and then I tried to arise, and I couldn't.

Q. Did you see any fire any place before the ex-

(Testimony of Antoine Belleci.)

plosion? A. Nothing at all.

The Court: How long were you at the hospital, how many days?

The Witness: Some five days.

The Court: Was it three days?

The Witness: It seems to me it was four or five days. [284]

The Court: The record shows he was discharged on October 1.

Q. (By Mr. Nave): Now, Mr. Belleci, you had stated, I believe, that you had worked on the Santa Lucia four or five months before this explosion, is that correct? A. Yes.

Q. And during those four or five months did you receive a check for your share each month?

A. I hadn't caught any fish during the four or five months.

Q. Did you receive any money during the four or five months that you were on the Santa Lucia before this explosion?

A. What we were going to get was little or nothing.

Mr. Nave: Thank you, that is all.

The Witness: We didn't get any fish.

Mr. Silvers: Your Honor, I have a photostat of a sketch which had been previously made of the boat in question, which I have shown to other counsel, which indicates that the location of the main deck structures, including the galley, crew's quarters and the gas tank fill pipe, which, for illustrative pur-

(Testimony of Antoine Belleci.)

poses, might be helpful, and I would like to offer that.

The Court: Any objection?

Mr. Nave: I have no objection with this understanding: that this photostat is a photostat of a drawing that was made [285] by Captain Hanson at the time his deposition was taken in connection with the other case, and if Captain Hanson was called as a witness for Cardinale——

The Court: Well, do you dispute this shows the relative location of these objects aboard the deck of the ship at the time of the explosion?

Mr. Nave: No, your Honor, I don't mean that.

Mr. Silvers: I am only offering it for that purpose.

Mr. Nave: I just want your Honor and the record to know who prepared it and under what circumstances.

The Court: Irrespective of who prepared it and under what circumstances it was prepared, do you have any objection to having the Court receive this as an exhibit to show the relative location of the various equipment and appurtenances of the ship, particularly of the deck, as they existed aboard the Santa Lucia on the day of the explosion, September 28, 1956?

Mr. Nave: I have no objection to it, your Honor.

The Court: No objection?

Mr. Vartan: No objection.

The Court: It will be received.

(Testimony of Antoine Belleci.)

Mr. Vartan: Reserving the right to cross-examine any witness as to——

The Court: Yes.

Mr. Vartan: ——the photostat at any subsequent time. [286]

The Court: Yes.

The Clerk: Respondent's Exhibit H, Cardinale's Exhibit H.

(The map above referred to was marked Respondent Cardinale's Exhibit H and received in evidence.)

Mr. Silvers: I might also point out to the Court that I don't think there will be any dispute on this point, that the length of the vessel was approximately 73 feet with a beam of about 21 feet.

The Court: Beam 21 feet; and length?

Mr. Silvers: About 73.

The Court: 73 feet.

Mr. Silvers: I think the exact figures are 72.8 and 20.5.

Cross-Examination

By Mr. Silvers:

Q. Mr. Belleci, how much below the level of the stove plate was this little pilot light that you have described for us?

A. (Through the Interpreter): The witness indicates about eight inches below the plate.

Mr. Vartan: I don't think he understood the question, your Honor.

(Testimony of Antoine Belleci.)

The Witness (Through the Interpreter): Indicates about a foot. [287]

Q. (By Mr. Silvers): And it is true, is it not, that it was the custom and practice on fishing vessels of this type that you had served on, to keep the pilot flame on while the ship was operating and at all times, other than when the crew was off the vessel completely?

Mr. Nave: I object to that question, if the Court please. It is not a question of whether this man had seen it on other vessels or not.

The Court: If you want to qualify him as an expert in good ship management and show that this was in accordance with good seamanship, you may do so, but he is thus far only qualified not in matters of maintenance, but in matters of a cook and fisherman.

Mr. Silvers: That is true, your Honor. I thought, however, that the custom and practice——

The Court: If he is qualified. He hasn't shown himself to have any experience in the management and operation of a ship. However, I will overrule the objection, but I am indicating to you that I am going to place very little weight on his testimony.

Mr. Nave: May I have a continuing objection to this line of testimony?

The Court: I don't like so-called continuing objections, I am going to take it, but I am going to consider [288] your objection as directed more to the weight to be given to this witness, but this being an admiralty suit, I will take it, but I will give it prac-

(Testimony of Antoine Belleci.)

tically no weight, give it no weight at all at the present time.

Mr. Silvers: I have in mind not his qualification as an expert on management, your Honor, but as a cook.

The Court: He may have been consistently careless in the operation of his stove, I don't know, he might have been extremely lucky and fortunate in his prior experiences, but you may have an answer to the question.

Will you read the question if you can locate it, Mr. Reporter?

(Record read by the reporter.)

A. The pilot light was kept lit at all times when the boat was in operation and when the crew went ashore and there was nothing to do aboard the ship, the pilot light was put out.

Mr. Nave: I move to strike the answer as not being responsive to the question.

The Court: I will take it. It is informative, anyway, on the issues. The motion denied.

Q. (By Mr. Silvers): Mr. Belleci, immediately after you felt the explosion, you told us that you fell to the deck, to the floor of the kitchen, is that correct?

A. Yes, right close to the [289] radio.

Q. Now, the bulkheads, the walls of the galley, the kitchen, were not blown up in the explosion, were they?

(Testimony of Antoine Belleci.)

A. No, because I tried to get up and everything seemed to be in order there.

Q. And from your position on the floor, you were able to see that the stove itself was still intact and had not been blown apart, isn't that correct?

A. Yes, I tried to get up and I couldn't. My brother-in-law came in and took me and put me in the skiff, Romeo, the owner of the skiff.

Q. The point I have in mind, Mr. Belleci, is that the stove, the kitchen stove, was still intact and had not been damaged after the explosion was heard and felt by you?

A. It was just like it was before the explosion.

Mr. Silvers: That's all.

Redirect Examination

By Mr. Vartan:

Q. Mr. Belleci, when you saw that the stove wasn't disturbed, was there any fire coming around, were there any flames around this stove area?

A. There wasn't any flame or fire around me, not at all.

Q. About how big an area was the galley area, how many feet wide and how many feet long was it?

A. A little wider than the jury box here and a little shorter in length. [290]

Mr. Vartan: For the record, counsel——

The Court: About 18——

Mr. Vartan: Indicating about 18 inches wider than the——

(Testimony of Antoine Belleci.)

The Court: Suppose you make it about eight by eighteen.

Mr. Silvers: I think that should be approximate.

The Court: All right.

Q. (By Mr. Vartan): Now, when you recovered your senses after the explosion, and you were in the galley, eight by eighteen, did you see any fire or flames any place in the galley?

A. Not in the kitchen near me.

The Court: All right. Thank you.

Are you coming back tomorrow? Are you going to bring the income tax?

Mr. Vartan: Yes, your Honor. We have had the same problem. He was supposed to. However, he has to stay here for the medical tomorrow; we hope to be able to call his family.

The Court: All right. Do you want to come inside a few minutes, please?

(Whereupon, an adjournment was taken until Thursday, September 5, 1957, at 10:00 o'clock a.m.) [291]

September 5, 1957—10:00 A.M.

The Clerk: Salmeri versus Cardinale and other consolidated cases, further trial.

The Court: I understand you gentlemen desire to place upon the record a stipulation.

Mr. Vartan: Yes, your Honor. In the matter of the actions involving the Libelant Nino Tarantino, the two actions on file, the record may show that a

stipulated decree may be entered for the payment of \$890.00 in full settlement of his two actions; and that the record may also show that the stipulated settlement is without prejudice to either Respondent on any remaining issues or cases.

Mr. Silvers: I think the record should show on that, your Honor, of that sum \$240.00 may be considered full settlement of the maintenance and cure claim of Libelant Nino Tarantino.

The Court: I have listened to the evidence in this case, I feel that this settlement is a just and fair settlement, \$240.00 payment, full payment of all claims arising from this incident with respect to maintenance and cure, and \$650.00 for the personal injuries.

I take it it is understood the settlement of this case, these suits by the Respondents is not to be deemed an [292] admission on their part of any liability, is not to be used against them for any purpose whatsoever in any of the litigation now pending before me or in any other suit.

Mr. Nave: Your Honor please, may the record also show that the Respondent Union Oil Company is paying \$325.00 of that.

The Court: Yes, and the balance of \$565.00 to be paid by the Cardinale Respondents.

Mr. Silvers: That's correct.

The Court: Submit a consent decree so providing so that I may sign it and have these libels dismissed without cost upon the record of the Court.

Mr. Vartan: Yes, your Honor.

The Court: All right, you may proceed.

Mr. Vartan: We will call Mr. Frank Pedrasaz.

Oh, excuse me. Your Honor, I notice there is a representative from the Marine Hospital with certain records. I hate to have her wait around. Will you please step forward?

The Court: It is customary in New York for the custodian of records just to turn them over to the Clerk.

Mr. Vartan: Very well.

The Court: What is the practice here?

The Clerk: Same way, your Honor. I will sign a receipt for her.

The Court: All right. [293]

Mr. Vartan: May it be stipulated, counsel, the records may be used and introduced in evidence?

Mr. Silvers: What records are these?

Mr. Vartan: These records covering the treatment and care of Frank Pedrasaz in the Marine Hospital in San Francisco.

Mr. Nave: I have no objection, except as to the records themselves, an opportunity to inspect them, if there is anything in them.

Mr. Silvers: We raise no question as to the foundation.

The Court: All right.

Mr. Vartan: We have an interpreter here.

The Clerk: Mr. Interpreter, will you please state your name for the record?

The Interpreter: Robert S. Silva.

(Whereupon, the Interpreter, Robert S. Silva, was sworn to act as the Official Court Interpreter.)

ter and to translate from the Spanish language into the English language and from the English language into the Spanish language during the testimony of the following witness.)

FRANCISCO PEDRASAZ LOPEZ

called as a witness, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as [294] follows through the Official Court Interpreter.

The Clerk: Will you please state your name to the Court?

The Witness: Francisco Pedrasaz Lopez.

Direct Examination

By Mr. Vartan:

Q. Frank, you are also known as Frank Pedrasaz, is that true? A. Yes.

Q. The name Lopez was your mother's name?
A. Yes.

Q. And the Spanish custom is you follow the mother's name also in your full name, is that right?

A. Yes.

Q. Frank, what is your age at the present time?

A. Thirty-six, thirty-seven.

Q. When is your birth date, please, and when will you be thirty-seven?

A. On the 20th of August.

Q. You were 37 the 20th of August, 1957?

A. No, 36 then.

Q. Oh, I see. Are you married, Frank?

A. Yes.

(Testimony of Francisco Pedrasaz Lopez.)

Q. How many children live at home with [295] you? A. Two.

Q. What is your wife's age? A. 38.

Q. Frank, do you speak a little English?

A. Yes.

Q. Now, on September 28th, 1954, were you a member of the crew of the Santa Lucia?

A. Yes.

Q. And how long had you been on the crew or in the crew of the Santa Lucia before it sank?

A. About three weeks to a month.

Q. And what were your duties?

A. I was one of the workers on board.

Q. Did you have anything to do with the engines?

A. Nothing.

Q. Did you do any repair work on the engines or any other equipment? A. No.

Q. Now, when the Santa Lucia came up to the Union Oil gas dock, where were you?

A. I was amidships.

Q. Did you notice where Frank Cardinale was?

A. He was above on the bridge.

Q. Did you assist in tying up the Santa Lucia to the gas dock? [296] A. Yes.

Q. After the vessel was tied up to the gas dock did you hear a conversation between Frank Cardinale and the Union Oil gas attendant?

A. They were talking. I didn't understand it all; the only thing I understood was that he requested thirty gallons of gasoline.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Did you hear any answer to that request from the gas attendant?

A. No, I started to do my job and they continued speaking.

Q. Did you see a gas hose handed down from the gas dock? A. I did.

Q. To whom was that passed?

A. Frank Cardinale, not the one that died, his cousin is the one that got ahold of it.

Q. Chico? A. Chico.

Q. That's Francois Cardinale?

A. I just know him as Chico.

Q. And then when Chico got the hose what did he do with it? A. He passed it to Frank.

Q. Now, did you see what Frank did with the hose?

A. I saw that he went towards the front part of the ship with the hose. [297]

Q. Do you know of your own knowledge whether Frank Cardinale stayed with the gas hose after that?

A. I saw nothing else, because I started to go to work.

Q. Well, when you started to go to work what part of the ship did your work take you to?

A. I was amidships working on the sling and cleaning up the anchovies, washing the anchovies.

Q. Will you state what you were doing with the anchovies?

A. We were throwing them into the ocean.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Was it necessary to cut their heads off, some of them?

A. Yes, we was scratching them with a coco, bringing them down.

Q. With a what?

A. It is a stick they call a coco.

Q. All right. Did you hear any subsequent conversation between Frank Cardinale and the gas attendant before the explosion?

A. No, because I started to work.

Q. Where were you when something unusual took place?

A. I was coming out of the galley, the galley door. I walked three steps, and then the explosion happened.

Q. What did you do in the galley?

A. It was rather late and I was hungry so I went in there and I picked some potatoes and I put them in my mouth.

Q. Do you know whether Mr. Belleci, the cook, saw you do [298] that?

A. I didn't see him, I don't know.

Q. Now, were the potatoes that he took, were they hot or were they cold?

A. They were already cold.

Q. Is the floor level of the galley or kitchen higher than the deck of the vessel?

A. Some three feet, more or less.

Q. Does he mean three feet or three steps?

A. The height of the deck of the kitchen is more or less three feet.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Higher than the deck? A. Yes.

Q. And as I understand it you were stepping out of the galley when the explosion took place?

A. No. When I came out I saw the boy that works for the Union Oil Company with one of these gas extinguishers in his hand running, and then I came out of the kitchen and I stepped, I took three steps, and then the explosion took place.

Q. You took three steps after you saw the Union Oil man running with a fire extinguisher, is that right? A. Yes.

Q. And you saw the man on the dock with a fire extinguisher. Now, was this before or after the explosion? A. Before the explosion. [299]

Q. Will you describe for the Court the size of the—what you call the extinguisher?

A. Something like this, long and red, I saw. I didn't pay too much attention to it.

Q. Will you show the length again?

A. (Witness indicating.) More or less about that long.

Mr. Vartan: About two feet, counsel?

Mr. Silvers: I would say between two and three feet.

Mr. Vartan: All right. You can sit down.

Q. (By Mr. Vartan): What color was the object that he was carrying? A. Red.

Q. Now, after you saw him—strike that. You saw him running, is that correct?

A. Yes.

Q. Which direction was he running?

(Testimony of Francisco Pedrasaz Lopez.)

A. Toward the place where the gasoline hose was.

Q. I see. And then you took some steps, is that right?

A. I came out of the galley. I walked three steps, and then an explosion happened.

Q. When the explosion happened, how many noises did you hear? A. Two.

Q. Will you describe in your own way what you heard?

A. The first one wasn't too big; it just went boom, and [300] then the second one was a bigger boom.

Q. What happened to you then?

A. My arm was broken and so was the lower end of my foot here (indicating).

Q. Now, at the time of the two booms you were on your feet standing up, were you not?

A. Yes. I was down—I was throwing anchovies into the bay.

Q. I see. Now, after you heard the two booms were you knocked unconscious? A. No.

Q. Did you see any fire anyplace after the two booms?

A. Yes; the first thing I did was to look up and I saw that there was a fire on the pier.

Q. At that time did you observe any fire on the vessel, the Santa Lucia?

A. There was still no fire on there.

Q. Did you observe any fire at any time later on the Santa Lucia? A. Yes; I did.

(Testimony of Francisco Pedrasaz Lopez.)

Q. And will you please state when that was?

A. All of us were already in the skiff and we were pulling toward shore, and then we saw the fire on board the ship.

Q. After you heard the two booms did you feel anything falling on you? A. Yes. [301]

Q. Did you observe anything fall on you from the dock?

A. All I felt was that I had a broken arm and I had like fire scar or something.

Q. Do you know whether any material that was burning fell on you?

A. It was what broke my arm.

Q. Can you remember and tell us, if you can, what that object was that fell on your arm?

A. I do not remember too well.

Q. Well, was it metal or was it wood?

A. It was wood.

Q. And was it hot or burning?

A. It was.

Q. Do you know where that object came from that fell on your arm? A. No; I do not.

Q. Now, you mentioned that you were in the skiff later, everybody except the dead men were in the same skiff, were they?

A. We were all there except Frank and Frank Cardinale, the one that died.

Q. You mean except Jack?

A. Jack Cardinale.

Q. And Frank Cardinale? A. Yes. [302]

Mr. Vartan: At this time, your Honor, may the

(Testimony of Francisco Pedrasaz Lopez.)

record show that I am showing Mr. Nave certain hospital records and bills?

If there is no objection, your Honor, we offer these documents, being a bill from the San Luis Clinic for the doctor bill.

Mr. Silvers: No objection, your Honor.

Mr. Vartan: And also the hospital records.

Mr. Nave: What is the amount of that doctor bill?

Mr. Vartan: \$136.12. That's the French.

The Clerk: Libelant's Exhibit 7 introduced and filed into evidence.

(Whereupon, the foregoing hospital records and certain medical records and bills were introduced and filed into evidence as Libelant's Exhibit No. 7.)

The Court: It is conceded by all that the charges on these bills annexed to this Exhibit are reasonable in amount?

Mr. Silvers: Yes, your Honor.

Mr. Nave: I will so stipulate, your Honor.

Mr. Vartan: I also offer—you haven't seen these. You better look these over, the Marine Hospital records.

I also show counsel the X-rays purported to have been taken at the Marine Hospital. [303]

We offer at this time, your Honor, the records of the Marine Hospital covering this witness, and they are in two separate attached folders. I think you can attach them together or they can be separate.

(Testimony of Francisco Pedrasaz Lopez.)

The Clerk: Libelant's Exhibit 8 introduced and filed into evidence.

(Whereupon the foregoing records of the Marine Hospital were introduced and marked as Libelant's Exhibit No. 8 in evidence.)

Mr. Vartan: Also offer the X-rays from the same hospital.

(Whereupon the X-rays from the Marine Hospital were included in Libelant's Exhibit No. 8 in evidence.)

Q. (By Mr. Vartan): Now, Frank, where were you taken—well, I think I will get to the point—you were taken to the French Hospital in San Luis Obispo, is that correct? A. Yes.

Q. And from there you were in the Marine Hospital?

A. Afterwards I was brought to the Marine Hospital in San Francisco.

Q. Now, you were in and out of the Marine Hospital on several occasions, were you not?

A. Yes.

Q. You don't recall the exact dates you were in there, in [304] and out, do you?

A. I do not.

Q. Now, you have already told us you suffered an injury to your right wrist. What did that injury consist of generally?

A. It was broken in there and then afterwards

(Testimony of Francisco Pedrasaz Lopez.)

the doctor took a piece of bone out of here and put it here.

Q. Well, when you say out of here you are referring to your right hip bone, is that correct?

A. Yes,

Q. They took some bone from the right hip bone and put it in the wrist? A. Yes.

Q. Where was that done?

A. In the Marine Hospital.

Q. First let's direct your attention to the French Hospital in San Luis Obispo. Did you have an operation there?

A. Yes, I was operated on there.

Q. And was that within a day or the next day after you arrived there?

A. One day afterwards.

Q. Do you know what was done in that operation? A. I do not know, I was asleep.

Q. All right. Following that operation in the French Hospital was a cast applied to your right arm? A. They did. [305]

Q. Will you please point out the area that the cast covered? A. From here to here.

Q. Indicating from the wrist to the elbow?

A. Yes.

Q. Were any casts applied to your right leg?

A. No.

Q. I am speaking now of the French Hospital.

A. No, they did not put any.

Q. Now, was a cast applied to your right leg by any other hospital?

(Testimony of Francisco Pedrasaz Lopez.)

A. Yes, they did here in San Francisco at the Marine Hospital.

Q. What area of your right leg did the cast that was put on your leg at the Marine Hospital extend?

A. From here to here. (Indicating.)

Q. Indicating from the right ankle up to the knee, or was it below the knee?

A. Below the knee.

Q. How long did you wear the cast on your arm, the cast that was put on at the French Hospital?

A. Until I arrived in the Marine Hospital. Then they took it off. I was operated on again and then they put another cast on.

Q. How long did you wear the second cast after you were [306] operated on in the Marine Hospital?

A. I had the first one on for about two to two and a half months.

Q. And how long did you have the cast on that was applied to your right leg at the Marine Hospital?

A. I don't remember exactly, but some six or eight weeks also.

Q. Now, Frank, calling your attention first to your leg injury, did you have any pain in the right ankle area following this accident?

A. Yes, I did.

Q. How long did you have that pain?

A. When it rains or it is cold it gets painful.

Q. Today?

(Testimony of Francisco Pedrasaz Lopez.)

A. Not today.

Q. But during the past few weeks have you experienced trouble or pain in your right ankle?

A. When I work it hurts, it pains.

Q. I see. Mr. Lopez, had you, prior to this injury involved in this case, had you ever injured your, any part of your right leg before?

A. Yes, I did.

Q. Will you tell his Honor what your previous injury to the right leg was?

A. I had an accident and they amputated the five toes. [307]

Q. Where did that occur?

A. In my country, in Spain.

Q. Was that during the Spanish Civil War?

The Court: What has that got to do with this case?

Mr. Vartan: Well, I didn't want the inference that he was accident prone.

The Court: I believe the record shows the toes are missing on both feet.

Mr. Vartan: No.

The Court: One says the right foot and there is a notation, says toes missing on both feet. Ask him that, will you please?

The Witness: No, only one foot.

The Court: Only one.

Q. (By Mr. Vartan): At the Marine Hospital you told us there of one operation on your right wrist. Were there subsequent operations on your

(Testimony of Francisco Pedrasaz Lopez.)

right wrist? A. Yes, they did.

Q. How many? A. Two.

Q. Was the last operation the one where they removed bone from the right hip and grafted it in the wrist? A. Yes, it was.

Q. Frank, at the present time tell us everything that [308] bothers you with your right wrist?

A. I have all these fingers numb and I have no power in my hand.

Q. Do you experience any pain in your hand or wrist?

A. Sometimes the whole arm becomes numb and then I have a pain on the entire arm.

Q. Do you have difficulty holding onto things with that right hand?

A. I sure have.

Q. By the way, Frank, are you right handed or left handed? A. I am right handed.

Q. Do you have any pain in the area of the hip where the bone was removed?

A. That hurts me always when I am walking or when I am working.

Q. Now, when were you able to return to work for the first time following these injuries?

A. I don't remember exactly, but it could have been a year and some months after the accident.

Q. And you worked for Mr. Olivieri?

A. Yes.

Q. Now, this may refresh your memory. You have given me certain tax returns and payroll deductions which shows that you worked in August of

(Testimony of Francisco Pedrasaz Lopez.)

1955. That would be 11 months after this [309] accident.

A. Yes, more or less.

Q. When you went to work for the first time what kind of work did you do?

A. I went to pick flowers.

Q. Did you have any difficulty with either your leg or your arm when you went to work on that first job picking flowers?

A. I had to pick the flowers with the left hand, because I couldn't with the other.

Q. How long did you work on the job picking flowers?

A. One month or one month and a half, more or less.

Q. And then after that did you have a job?

A. Yes, I did.

Q. What did you do?

A. I went back fishing.

Q. How long did you fish?

A. Some four or five months only.

Q. Is there any reason why you stopped that job fishing?

A. I couldn't continue with the job because I had too much of a painful arm and I couldn't work.

Q. When you were fishing did you have to handle the nets? A. Yes, I had to handle them.

Q. Did you handle nets—strike that.

Ordinarily you would use how many hands in handling the nets? [310] A. Both.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Is it true that from the 28th day of September, 1954, until August of 1955 you were not working at any job? A. I was not.

The Court: When did you go to work in August of 1955, what time?

The Witness: I don't remember exactly, but I went out to pick flowers.

Mr. Vartan: Your Honor, for the record we have certain records here. I haven't had a chance to look at them, just came in at 10:00 o'clock, but the record will show, I believe, that he went back to work either the last part of July or the early part of August.

Q. (By Mr. Vartan): Now, before introducing the records, I show you, Mr. Pedrasaz, United States income tax returns for 1952 and 1953, which is a blank which you have some pencilled notations as to the return that you made on 1953 and also your 1954 income tax return.

Are those true and correct copies of the returns which you made? A. They are.

Q. Now, I also show you certain slips of paper signed by Mr. Olivieri which indicates your salary and the deductions for the year 1955 commencing 8-6-1955 and ending, I believe, [311] on November 18, 1955.

Now, do those slips of paper correctly set forth, Mr. Pedrasaz, the earnings that you had from Mr. Olivieri when you first went back to work?

A. They do.

(Testimony of Francisco Pedrasaz Lopez.)

Mr. Vartan: Let the record show that I am showing the document just mentioned to Mr. Nave and Mr. Silvers.

The Court: An examination of the Marine Hospital records shows that this man was certified to go back to work on July 26th, 1955. It appears the maximum period of maintenance that you can claim would be on the date of his discharge from the Marine Hospital from October 13, 1954, to February 14, 1955, and from February 26, 1955, to July 26, 1955. Have you calculated those days?

Mr. Vartan: No, your Honor, we just got the records.

The Court: All right. Appears to be, from these records that you have introduced, his only claim for cure would be a total of two bills which were incurred down at Monterey of \$167.37.

Mr. Vartan: Correct, your Honor.

The Court: All right.

Mr. Nave: We have no objection to the introduction of these income tax returns.

Mr. Vartan: Before offering them into evidence I [312] will ask the witness a question.

Q. (By Mr. Vartan): Now, from the payroll deductions from your flower picking job with Mr. Olivieri, it indicates that from 9-6, for one month—that ending 9-6, one month you had gross earnings before deductions of \$232.65, is that correct?

A. Yes.

Q. And then the following month you had a gross income of \$364.19?

A. Yes.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Was that about your average monthly gross income working with the flower job?

A. No, when I was working on the flower I only earned a dollar an hour.

Q. I see. Now, the first payroll deduction here, it says period ending 8-6, that would be August 6, 1955, \$287.92, and there is a notation in ink, "Half a month." Now, obviously it's an error, your Honor. Did you earn \$287.92 the first month that you worked, or was that only for two weeks?

Mr. Nave: Just a moment, if the Court please. I object to counsel impeaching his own witness.

Mr. Vartan: I am not impeaching. We have got these records and it shows—it is obviously an error, Your Honor. Over in that corner, Your Honor, there is a half and when you compare it with the other full monthly gross, it is [313] obviously an error.

The Court: I think what has been torn off is a one, and apparently it is one and a half months.

Mr. Vartan: Could be; I don't know.

The Court: All right. I think the papers speak for themselves, since this witness didn't write it out himself. He can't explain it anyway. Might ask him when he started to work here.

Mr. Vartan: Yes, I did, your Honor, and of course it is established it was around August.

The Court: All right.

Mr. Vartan: So that is the closest we can come.

We offer, then, the tax returns and the payroll deductions which have been previously described for the record as Libelant's Exhibit next in order.

(Testimony of Francisco Pedrasaz Lopez.)

The Clerk: Libelant's Exhibit 9 introduced and filed into evidence.

(Whereupon, the income tax returns above referred to were received in evidence as Libelant's Exhibit 9.)

The Court: Shall we have a recess?

Mr. Vartan: Yes, I didn't realize the time.

Yes, your Honor.

(Short recess.)

The Court: When we adjourn for lunch I would like to have you come in a few minutes. [314]

Counsel, may I call your attention to the fact that you have not produced the witness' tax returns for the year 1955 or 1956.

Mr. Vartan: Well, that is the only thing—his wife speaks English and she mailed those up with him. I will ask, your Honor.

The Court: Let's proceed.

Q. (By Mr. Vartan): Now, Mr. Pedrasaz you have not, or we do not have at the present time your tax returns for 1955 and 1956. Were tax returns made for those years? A. Yes, I did.

Q. And did you do that or did someone do it for you?

A. Another person did it for me, for my wife, my wife is the one that takes charge of that.

The Court: How much did you make in 1955?

The Witness: I am not so sure, but somewhere around \$4,000.00.

(Testimony of Francisco Pedrasaz Lopez.)

The Court: How much did you make in 1956?

The Witness: More or less the same.

The Court: What is your rate of pay now, what are you working at now?

The Witness: Butcher.

The Court: How much do you get, about how much?

The Witness: Ninety-six. [315]

The Court: \$96.00 a week?

The Witness: Per week.

The Court: Do you belong to the union?

The Witness: Yes.

The Court: Now, what do you do as a butcher, what type of work do you?

The Witness: I work where they slaughter the animals.

The Court: In a slaughter house?

The Witness: Yes.

The Court: What do you do in the slaughter house?

The Witness: The work I do now is cleaning the heads.

The Court: What do you kill there, beef?

The Witness: Beef, lamb.

The Court: Beef and lamb. How heavy a beef run, how heavy does the beef run?

The Witness: About 110.

The Court: You able to cut down the beef yourself and handle it?

The Witness: No, I do not, I only take the meat out of here(pointing to the head), from the bone.

(Testimony of Francisco Pedrasaz Lopez.)

The Court: Pointing to the glands?

The Witness: No, the one here on the [316] cheeks.

Q. (By Mr. Vartan): Now, I don't know whether I asked this witness, so I will be sure, at the present time, Frank, what about the feeling, do you have feeling in your fingers of your right hand?

A. Yes, I do.

Q. Is there any numbness there?

A. Yes, almost every day it becomes numb and I have to put the hand in cold water.

Q. I see. When you put it in cold water can you feel the cold water in your fingers?

A. I do.

Mr. Vartan: You may cross-examine.

Cross-Examination

By Mr. Nave:

Q. Mr. Pedrasaz, you say when you went in the kitchen you didn't see the cook in there?

A. I don't know whether he was in there or not, I paid no attention. I was too hungry, I went to get these potatoes.

The Court: You were a butcher before this explosion, weren't you?

The Witness: Yes.

The Court: How long you been a member of the butcher's union?

The Witness: Some five years. [317]

(Testimony of Francisco Pedrasaz Lopez.)

The Court: And you are still able to work as a butcher, aren't you?

The Witness: Yes. The arm bothers me, but I have a family to support.

The Court: I see.

Mr. Nave: Your Honor, in the interests of time, if it is agreeable with the Court and counsel, the deposition of Mr. Pedrasaz was taken October 24, 1955, through a Spanish interpreter, and there are a number of portions of this deposition that are at variance with his testimony here and if the Court will permit it, and counsel agree, I could save time by reading the portions of the deposition that are adverse to his testimony here and save considerable time.

The Court: Any objection on that?

Mr. Vartan: No, except, your Honor, I wasn't present at Monterey when that deposition was taken, but I think Mr. Silvers and Mr. Whelan and Mr. Nave were there, and it was my understanding that the interpreter they had at that time had great difficulty in interpreting because of the particular type of Spanish that this man speaks. In fairness to the Libelant I think that should be understood. I think both Mr. Silvers and Mr. Nave will admit they had one terrible time because at times Mr. Silvers would correct the interpreter's interpreting.

Mr. Nave: I have no objection to his Honor reading [318] the entire deposition and drawing his own conclusion about that. I don't agree that there was any terrible time as far as interpreting is concerned. How about that, Mr. Silvers?

(Testimony of Francisco Pedrasaz Lopez.)

Mr. Silvers: No difficulty, in my opinion, in the interpreting. I don't know so far as——

Mr. Whelan: There was no question there was a lot of difficulty.

Mr. Silvers: I don't know how extensive Mr. Nave's readings are going to be.

Mr. Nave: Not going to be extensive. Some excerpts from it, adverse testimony, that is all.

Mr. Vartan: We have no objection to the Court reading the entire deposition but with that understanding so that we don't prejudice this man's rights, that is all.

The Court: Then you consent that the deposition be received in evidence?

Mr. Silvers: I don't enter into that consent, your Honor.

The Court: I think you better proceed; apparently nobody wants it.

Mr. Nave: Very well.

Q. (By Mr. Nave): Mr. Pedrasaz, you recall your deposition was taken on October 24, 1955, at Monterey?

Mr. Vartan: Counsel, in fairness to the [319] witness it was taken in Salinas.

Mr. Nave: The cover says Monterey, the County of Monterey, Salinas, and County of Monterey.

The Witness: Yes.

Mr. Nave: I should know, I was there.

Q. (By Mr. Nave): You recall that and there was an interpreter there? A. I do.

(Testimony of Francisco Pedrasaz Lopez.)

Q. And I asked you some questions at that time about the explosion and you gave certain answers?

A. I replied, but I don't know how the interpreter put the translation because I couldn't understand the woman, I couldn't understand her too well.

Q. I will ask you if these questions were asked to which you gave these answers. Referring to page 20, first question, line 10.

“Question: I will ask the question again if you didn't understand it. Where were you, yourself, on the boat when the explosion occurred?”

To which you answered:

“Answer: It's kind of difficult to point the exact spot where I was, since there is no boat to point out.”

Does your Honor want the interpreter to interpret this? [320]

The Interpreter: May I have it? It is a little bit too long.

Mr. Nave: I will give it to you to read if we have to go through it.

The Court: What page are you reading from?

Mr. Nave: On page 20, and my first question commences on line 10.

The Interpreter: May I proceed to read it to him?

Mr. Nave: Yes, read the question and the answer.

The Court: What does he say? Did he make that answer?

(Testimony of Francisco Pedrasaz Lopez.)

The Witness: It is kind of difficult to point—yes.

Q. (By Mr. Nave): The next question on line 23, Mr. Interpreter.

The Court: Suppose you read it out in English.

Q. (By Mr. Nave): “Question: And what had you been doing there?

“Answer: Just a few minutes before, before we brought up that twenty gallons of gasoline that Frank had requested I went into the kitchen and I had a few fried potatoes.”

A. I didn't say it in that manner. [321]

Q. The next, and continuing his answer, commencing on line 11:

“Answer (Continuing): When I was standing or came out of the kitchen I saw the cook coming out and he looked at me and he was very angry at me because of what I had done (referring back to the potatoes). At that moment I saw the man that works for the oil company with something that turns out the fire, the fire extinguisher, but I didn't pay very much attention. I had just bent over to throw out some fish called anchovy and it was at that moment when I heard the explosion.”

A. That wasn't my answer to the interpreter, at the time.

Q. On page 22, line 18:

“Question: Didn't you say that he was angry with you?”

To which you answered:

“Answer: I saw him coming. I didn't give him

(Testimony of Francisco Pedrasaz Lopez.)

a chance to say anything, I bent over and put—and covered my mouth and it was about that time that the explosion was heard.”

A. No, I did not, because I did not see the cook.

Q. And continuing on, the next question, line 22, the [322] question and answer as follows:

“Question: Were you below deck when the explosion occurred?

“Answer: As I was coming out—when I came out of the kitchen I saw the man directly above me, the man that was running that was working—that gave the stuff to make the gasoline, the man that gave the hose or brought in the hose to put in the gasoline.”

A. No, I did not.

Q. That is not true?

A. I did not answer in that manner. I don't think that interpreter understood me or couldn't translate what I was saying.

Q. You didn't say that? A. I did not.

Q. Question continuing:

“And he was running?

“Answer: Yes, he ran up and that's when I saw him picking up that stuff—the fire extinguisher—and I was bending over and it was at that time that I heard the explosion.”

A. I replied to these questions, but I was not bending over when I saw this man, I was standing in front of the [323] kitchen when I saw him.

Q. The next question:

“Question: He was running with the fire extinguisher in his hand before the explosion?”

(Testimony of Francisco Pedrasaz Lopez.)

To which you answered:

“It happened just about two seconds. All I had time was to come out, saw him at a glance, and I bent over and it was at that time that I heard the boom! Boom!”

A. The declaration that I made is one that I made in Salinas and the same as I am making here today.

Q. The next question on line 17, same page:

“Question: Was there any fire on the boat at that time?

“Answer: No, the boat—there was no fire on the boat until three or four minutes after that.”

A. I did reply that way.

Q. On page 24, commencing on line 8:

“Question: You have stated, have you not, that before the fire and explosion on the boat you saw the man, the gasoline service station man, running with a fire extinguisher in his hand, is that correct?

“Answer: I saw him running and I just [324] took it for granted or supposed that he did have the fire extinguisher because it was at that time that I heard the blows, boom! Boom!”

A. Yes.

Q. The next question:

“Question: Did you see a fire extinguisher in his hand?

“Answer: Yes, right after the explosion I came up and I saw him still holding the extinguisher but there was no actual fire at that time.”

A. When I saw him it was before the explosion.

(Testimony of Francisco Pedrasaz Lopez.)

Q. Did you give that answer to that question?

A. That is not the manner in which I replied.

Q. Now, on page 25, line 13:

“Question: Now, will you please explain to me, if you will, please, whether or not the man you saw running with a fire extinguisher in his hand was doing so before or after the explosion?”

“Answer: As I said before, I saw him running and right a second later or about the same time I heard the explosion. I couldn’t even tell whether the explosion [325] was right at the boat or from the wharf.”

A. I told the interpreter to tell them that when I heard the boom! Boom! I had seen the man running with the fire extinguisher before that boom! Boom!

Q. You did not give that answer?

A. That is what the interpreter put. Yes, I did.

Q. All right. At the bottom of page 28, the last line:

“Question: And where was the man running from and to, what point was he running when you saw him with the fire extinguisher in his hand?”

“Answer: I didn’t have—have time to notice and I didn’t have a chance to find out. I was just bending over throwing the anchovies when the explosion was heard.”

A. The interpreter put it somewhat different from what I said.

Q. Now, on page 29, the question following that:

“Question: Now, when you—strike that.

(Testimony of Francisco Pedrasaz Lopez.)

When the Santa Lucia first went up to the dock to get gasoline where were you?

“Answer: We had just finished tying up the boat. I went into the kitchen and was just coming out when the explosion occurred.” [326]

A. No, I did not answer like that.

Q. On page 39——

Mr. Whelan: Mr. Nave, the next line, line 11, the same page, one of the attorneys said he didn’t understand the question, it wasn’t interpreted right, and it was done all over again.

Mr. Nave: What page was I on?

Mr. Whelan: You were on page 29, line 11.

Mr. Nave: Thank you. I will be glad to read any part of it or all of it, I offer to put the whole thing in evidence, renew my offer.

“Mr. Whelan: He did not understand the question.

“Q. (By Mr. Nave): I am speaking now of before the explosion. Where were you when the boat first came up to the dock to get gasoline?

“Answer: You mean before the boat arrived by the wharf?

“Question: Yes.

“Answer: Right at the border, the border where all the rest of them were working.

“Question: And what were you doing then?

“Answer: We were cleaning the boat and throwing off the fish, the old fish before [327] arriving at the wharf.”

Is that what you wanted me to read?

(Testimony of Francisco Pedrasaz Lopez.)

Mr. Whelan: Yes.

Q. (By Mr. Nave): Now, on page 39, line 19:

“Question: Now, at the time of the explosion and fire when did you first notice a fire any place?

“Answer: After the explosion at the wharf.”

A. That is correct.

Q. The question following:

“Question: Did you see any fire on the boat at all?

“Answer: No, about four minutes after the explosion I saw the wharf burning, but just the wharf, and then the boat started on fire.”

A. I told the interpreter to explain that after the explosion on board the ship I saw the fire when I was trying to save my life and I was on the skiff. The pier was already on fire then. It was about four or five minutes afterwards when the boat began to burn, what I said.

Q. The next question, bottom of page 39:

“Question: The first fire that you saw [328] on the boat was about four minutes after the explosion?

“Answer: Yes, not exactly, but it could have been three or four minutes. Since I had my hand—my arm or hand, and my leg broken, I can imagine it was about three or four minutes when the wharf was on fire — three or four minutes before the boat started to burn or fire.”

Did you give that answer to that question in your deposition?

A. That is not what I told the interpreter.

Q. What did you tell the interpreter?

(Testimony of Francisco Pedrasaz Lopez.)

A. What I told the interpreter to repeat was that when I looked up, I put my head up and looked up, the pier was on fire and that about three or four minutes later the boat began to go on fire.

Q. On page 41, question and answer on line 4.

“Question: Now, describe exactly where the fire was in the hose that you saw.

“Answer: When the explosion was heard I looked up but I couldn’t tell whether that explosion occurred on land or in the boat. I just remember looking up and I saw the wharf on fire. All I did when I found out that my arm was broken, I just ran out to [329] save my life.”

A. Yes, I did.

Q. On page 42, line 14:

“Question: How long before or after the explosion did you see a fire on the wharf?

“Answer: A few seconds, that’s all.”

A. Yes.

Q. The next question:

“Before or after?

“Answer: After the explosion.”

Q. That’s correct, isn’t it—well, let me read that.

“Question: In other words, there was an explosion first, isn’t that correct?

“Answer: I don’t know exactly. I heard two boom! Boom!”

A. Yes.

Q. That is correct, isn’t it? I have no further questions.

(Testimony of Francisco Pedrasaz Lopez.)

The Court: Do you have any questions?

Mr. Silvers: One, your Honor.

Cross-Examination

By Mr. Silvers:

Q. I want to show you a photograph, Mr. Pedrasaz; do you recognize it as showing generally the scene of the wharf where this explosion took place? The photograph was taken after the [330] explosion. You recognize the general area?

A. I do.

Q. I am calling your attention to an ink mark on the photograph and ask you with reference to the one mark P-7, if that is the approximate location where you saw the Union Oil man with the fire extinguisher?

A. That was exactly where he was.

Mr. Silvers: We will offer this in evidence, your Honor, as Libelant's Exhibit Cardinale next in order.

The Clerk: Respondent Cardinale's Exhibit I introduced and filed into evidence.

(Whereupon the foregoing photograph was marked and introduced into Evidence as Respondent Cardinale's Exhibit I.)

Mr. Silvers: I have no further questions.

Mr. Vartan: No questions.

The Court: Thank you.

Suppose we adjourn; what time do you want to get back?

Mr. Vartan: Two o'clock, your Honor?

The Court: Two o'clock. All right, and can you come inside for a few moments?

Mr. Vartan: Your Honor please, so that all the attorneys know, Mr. Silva has to leave, he won't be back.

The Court: We are through with this [331] witness?

Mr. Vartan: Yes.

(Whereupon Court was adjourned until 2:00 o'clock p.m. of this date.)

2:00 P.M.

Mr. Vartan: At this time, may it please the Court, we offer the deposition in the case of Antoine Belleci as Administrator of the Estate of Jacques Cardinale, we offer the deposition of Marie Cardinale, taken in Algiers on the date shown. All counsel, I believe, have copies of this deposition and will it be stipulated deemed read in the record?

Mr. Nave: Yes, so stipulated.

Mr. Silvers: Yes.

The Clerk: Mark that in evidence?

The Court: Yes, then give it to me.

The Clerk: Libelant's Exhibit 10 introduced and filed into evidence.

(Whereupon the deposition of Marie Cardinale was introduced and marked as Libelant's Exhibit No. 10 in Evidence.) [332]

Mr. Nave: May I see that, your Honor, to see if the cross-interrogatories are all there? I think they

are. The cross-interrogatories are attached to that, your Honor.

Mr. Vartan: Now, your Honor, on a prior occasion we offered the deposition of Francois Cardinale who is now in Algiers, and at that time, your Honor, counsel stated that the following day they were to point out any objections they had.

The Court: I assume that if they didn't do so they had none and I have had none placed upon the record. Therefore, I assume they had no objection to any of the interrogatories.

Mr. Nave: That is correct, your Honor.

Mr. Silvers: That is correct.

Mr. Vartan: May it be stipulated the deposition is deemed read into the record?

Mr. Nave: So stipulated. We will mark it in evidence.

Mr. Vartan: We will call Mr. Charles Caldwell to the stand, please.

CHARLES HERBERT CALDWELL

called as a witness by the Libelants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name to the [333] Court?

The Witness: Charles Herbert Caldwell.

Mr. Vartan: May the record show that this witness is called as an adverse witness, your Honor?

The Court: You don't have to; you may make that statement.

(Testimony of Charles Herbert Caldwell.)

Mr. Vartan: My worthy opponent advised me I should, so it is his responsibility.

The Court: We don't do that.

Mr. Vartan: All right.

The Court: If it is the custom here you can follow the local custom. This witness is Charles Herbert Caldwell.

Direct Examination

By Mr. Vartan:

Q. Mr. Caldwell, on September 28, 1954, you were employed by Respondent Union Oil Company of California? A. Yes, sir.

Q. Your employer owned and operated the sales or gas dock involved in these actions, is that true?

A. Yes, sir.

Q. Will you tell us very briefly what your duties were?

A. My duties as a launchman were to operate and take care of the boat, to act as a leadman among the wharf crew and make sales to fishing boats, rather vessels. [334]

Q. And the sales you mentioned that you made to other fishing boats and other vessels were made from the gas dock situated on an offset of the main wharf, is that right? A. Yes, sir.

Q. On September 28, 1954, Mr. Caldwell, when did you first observe the fishing vessel Santa Lucia?

A. I observed the fishing vessel as it approached from the southeast.

Q. It approached from the high seas, that is,

(Testimony of Charles Herbert Caldwell.)

from the seaward? A. That is correct, yes.

Q. Where were you when you first observed the Santa Lucia?

A. I was in the neighborhood of the foreman's office on the main dock.

Q. Now, you have been in court most of the trial, so I assume you have seen this diagram, have you not? A. This is my first day.

Q. Oh. Well, you have been here this morning?

A. Yes, sir.

Q. There is a designation of the wider area of the wharf between the notations Berth 4 and Berth 5, there are two squares with the notation "Change Room" and "Office." Were you in the vicinity, then, of one of those places?

A. Yes, the southern building.

Q. That would be the office? [335]

A. Yes, sir.

Q. Who else was present with you at that time?

A. Mr. Johnson was inside the office.

Q. Who else?

A. There were other men on duty at that time, but I believe we were the two that were together at that moment.

Q. I see. Now, when you saw the Santa Lucia it was approaching the area designated on the diagram, and I should mention in the last question, when you identified where you were, that's the diagram designated as Libelant's Exhibit No. 2, for the record.

Now, when you noticed the Santa Lucia approach-

(Testimony of Charles Herbert Caldwell.)

ing, it was approaching the area marked Berth 4, was it not?

A. Yes, it was approaching towards Berth 4.

Q. Did you have a conversation with anyone on the Santa Lucia, Mr. Caldwell, when it arrived or approached Berth 4? A. Yes.

Q. Will you please state what that conversation was?

A. When the vessel came within hailing distance somebody on the bridge told me he wanted some gasoline and I asked how much, with respect that I knew we had another tanker coming and I wanted to plan my work if I could to complete the sale——

Q. Just answer the question, Mr. Caldwell, please. What conversation did you have, not what you thought.

A. All right. He so stated he wanted about thirty gallons [336] of gas.

Q. All right, when you say he, that was someone on the Santa Lucia?

A. Somebody on the overheads.

Q. I see. And then did you say okay?

A. I told him where to tie up here at the gas dock, yes, sir.

Q. And the area of Berth 4 is about 450 feet from the gas sales dock, isn't it, approximately?

A. Roughly, yes.

Q. What type of gasoline did you sell at that gas dock?

A. We had one product; it was regular.

Q. Regular gasoline. Your brand, I believe, is 76, is that right? A. 7600.

(Testimony of Charles Herbert Caldwell.)

Q. Yes. For the record that is the ordinary commercial gasoline that is used in automobiles and engines of various types, isn't that right?

A. I believe it is.

Q. Then am I correct in saying, Mr. Caldwell, that you walked from the area that you were when you had the first conversation that you have just related to the sales dock, did you not?

A. After picking up my cash box and sales ticket I walked down to the gas landing. [337]

Q. And the Santa Lucia was being tied up at the sales dock, is that true?

A. I arrived there first as he was approaching.

Q. Then you watched it tie up? A. Yes.

Q. Mr. Caldwell, is it not a fact that when you arrived at the sales dock and after the vessel tied up you were told by a man on the Santa Lucia the capacity of the gasoline tank to be filled?

A. No, sir.

Q. Do you deny he told you how much the tank would take?

A. He did not tell me the capacity of the tank.

The Court: What other conversation did you have with this man? You told us that he was—you asked whether he wanted gas and he said yes. You asked him about how much, or how much, did you?

The Witness: Yes, sir.

The Court: And he said about 30 gallons?

The Witness: Correct.

The Court: Then directed him down to where the pump was?

(Testimony of Charles Herbert Caldwell.)

The Witness: Yes.

The Court: And he docked there?

The Witness: Correct.

The Court: You walked down? [338]

The Witness: Well, I was there first when he tied up.

The Court: What happened after that? Let's get his story first and then you may examine him, if you want. I prefer that he first tell, give his testimony, then you may cross-examine, if you will.

Mr. Vartan: All right, your Honor.

The Court: What happened?

The Witness: I again asked him how much gas he would use and he told me it would be about thirty gallons. I then gave him the gasoline hose, and as I was delivering it to him I asked him for his name, and he in turn told me that he was Frank Cardinale from Monterey.

I then, after he had received the hose and was preparing to fill his tanks I went in and checked my credit book and I found out that Frank Cardinale's name was associated with the Santa Lucia and I was assured his credit was in good standing.

Q. (By Mr. Vartan): Now, you have already told me that he didn't tell you how much the tank would take.

Now, counsel, I am referring to a statement which was furnished in this matter, statement of Charles Caldwell. It is your statement, counsel, you furnished it.

Mr. Nave: Your Honor, please, I don't quite

(Testimony of Charles Herbert Caldwell.)
understand [339] the purport of this line of questioning. I have no objection to the statement being presented to the Court.

The Court: I don't know and there is nothing before me now except conversation between counsel. I suggest we proceed with the trial and then if something is done you can put your objection on the record. I have nothing before me at this time.

Q. (By Mr. Vartan): Mr. Caldwell, I show you what purports to be the statement of Charles H. Caldwell, launchman, Avila Wharf, Northern Division, Pipeline Department, and ask you if that statement bears your signature and you gave that statement.

The Court: Does this paper that counsel now shows you bear your signature?

The Witness: Yes, it does.

The Court: And is it signed on each page, or is it only one page?

The Witness: These are duplicates, aren't they, signed on each page?

Mr. Vartan: Yes, there are two copies.

Q. (By Mr. Vartan): It is signed on each page, is it not? A. Yes, sir.

The Court: You offer it in evidence?

Mr. Vartan: Yes, your Honor. [340]

The Court: Any objection?

Mr. Nave: No objection, your Honor.

The Court: Received in evidence without objection.

(Testimony of Charles Herbert Caldwell.)

The Clerk: Libelant's Exhibit 11 introduced and filed into evidence.

(Whereupon, the foregoing statement of Charles Caldwell was introduced and filed into Evidence as Libelant's Exhibit No. 11.)

The Court: You say you had an extra copy of that, counsel?

Mr. Vartan: Yes, your Honor. Here, you can give his Honor the one that is marked.

Q. (By Mr. Vartan): I will ask you if you made this statement and signed your name to it: "As he took the hose I asked him approximately how much gasoline he would need. He replied that she will take about thirty gallons."

Did you make that statement?

Mr. Nave: We will stipulate, if the Court please, the statement was signed.

Mr. Vartan: I would like to cross-examine——

The Court: That's not an objection, the objection is overruled if it is intended to be that.

Q. (By Mr. Vartan): Did you make that statement that he told you that the [341] tank would take—that she will take thirty gallons?

Mr. Nave: Your Honor please, I object to this method of interrogation. There is no foundation laid for any attempt to impeach.

The Court: Overruled. Did you make that statement?

The Witness: I believe I said she would take about—he said she would take about thirty gallons.

(Testimony of Charles Herbert Caldwell.)

Q. (By Mr. Vartan): Then he did tell you the capacity of the tank or how much gasoline the tank would——

Mr. Nave: Your Honor please, that is objectionable——

The Court: Objection sustained.

Mr. Vartan: All right.

The Court: A conclusion.

Q. (By Mr. Vartan): And when the man said, "She will take about thirty gallons," you understood, "She" to mean the vessel, did you not?

A. Yes, sir.

Q. Mr. Caldwell, was this conversation before or after a fuel hose was passed down to the vessel?

A. That was as I passed the hose to the man on the boat.

Q. Very well. And after the hose was passed, was it passed to the same man that you had the conversation with? A. At what time? [342]

Q. When you first passed the fuel hose down to the vessel was it to the same man with whom you had had the conversation?

A. I believe it was.

Q. After passing the fuel hose down to the man on the vessel you checked a meter which was on the dock, did you not? A. Yes, sir.

Q. And you made sure that the meter registered zero? A. Correct.

Q. Now, Mr. Caldwell, the offset where the gasoline was sold by your company is located on the diagram, and enlarged right below it. Now, the meter,

(Testimony of Charles Herbert Caldwell.)

which we just talked about, is located, is it not, six feet from the edge of the dock which was closest to the vessel? A. Approximately, yes.

Q. Now, this diagram is scaled ten feet to the inch. Would you please mark the location of the meter on the diagram?

Wait, this is ten feet to the inch, so if you will mark it on that.

A. The gasoline meter was located approximately in this position right here.

Q. Make an X and mark that C-1 as being the position of the meter.

Mr. Nave: Counsel, would you mind, if it is agreeable to the Court, writing the words "Gas Meter" on the diagram? [243]

Mr. Vartan: Write under C-1 what counsel suggests.

Q. (By Mr. Vartan): Pointing to a circle on the enlarged portion of the gas dock I notice the words 76 gasoline inside of a circle. Is that where the gasoline storage tank was? A. Yes, sir.

Q. And that's equivalent to this one on this diagram, is that right? A. Yes.

Q. How did the gasoline come out of that tank, by what method? A. Two inch pipe.

Q. And that two inch pipe was attached to the tank, the storage tank at what position of the tank, at the bottom or top or in the middle?

A. At the lower level of the tank.

Q. And will you point out where the two inch pipe was attached to the tank insofar as the circle

(Testimony of Charles Herbert Caldwell.)

is concerned? A. (Witness marking.)

Q. Now, from there will you take the pencil and show where the gas line emanating at that point finally came to the meter?

A. (Witness marking): About in here.

Q. You have got an X there where the meter is and marking the meter on the enlarged portion of it, and I will make the [344] line, Mr. Caldwell—draw a little heavier so it can be seen.

Now, from the meter where did the gas flow, in what direction?

A. It went straight ahead to about this position here where it joined the hose reels.

Q. And the hose reel was how far from the edge of the gas dock?

A. It was right at the edge of the gas dock.

Q. Well, you have it marked somewhat—

A. Back in here.

Q. So I will mark this C-2, the hose reel.

Now, on either side of the meter, Mr. Caldwell, was a valve, was there not? A. Yes, sir.

Q. And how far from the meter were these valves, right at the meter?

A. Not right at the meter, it was a short interval between the valve and the meter.

Q. Now, will you put a line like that across to indicate the location of the valves at the meter?

A. (Witness marking.)

Q. That will be marked C-3, "Valves."

Now, you may sit down.

Those valves, Mr. Caldwell, would turn off or turn on the flow of gasoline, would they not? [345]

(Testimony of Charles Herbert Caldwell.)

A. Yes, sir.

Q. And they were handled manually?

A. That's correct.

Q. How much of a turn—strike that.

Were both valves of the same type? I mean, were they similar in nature, both valves?

A. Both made by the same company.

Q. Mr. Caldwell, how much of a turn would it take to turn off the flow by the use of these valves?

A. They were a plug-type valve, a quarter turn would open or close it.

Q. A quarter of a turn. Do they have a lever attached or handles? A. Yes, sir.

Q. How long was the handle or lever?

A. It was a T-handle and it would be about eighteen inches.

Q. I see. Now, after passing the hose to the man on the vessel you turned on the flow of gasoline by turning those valves, did you not? A. Yes.

Q. Before doing that you checked the meter to see that it registered zero, did you not?

A. Yes.

Q. Mr. Caldwell, did you see the man on the Santa Lucia open a vent or fill pipe which was on the deck of the vessel? [346] Did you actually watch him do that?

A. No, I don't believe I did.

Q. Did you pay any particular attention to the fill pipe, that is, as to its construction or type?

A. Yes, I did.

Q. Will you tell his Honor what you observed, of the type of fill cap?

(Testimony of Charles Herbert Caldwell.)

A. It was a flush type fitting, it was flush with the deck.

Q. You could tell that. How far below you on the dock was the Santa Lucia, the deck of the Santa Lucia?

A. At that position it was about eight or nine feet below me.

Q. Well, were portions of the Santa Lucia lower than others, the deck of the Santa Lucia?

A. No.

Q. Isn't it a fact, Mr. Caldwell, that the deck of the Santa Lucia was twelve feet below the level of the dock? A. Well, this is just an estimate.

Q. Now, the Santa Lucia is tied up, and so far as direction is concerned it is correctly depicted on the diagram, is it not?

A. She was tied up port side to, that's right.

Q. You had worked on the gas dock in the sale of gasoline to fishing vessels how long prior to this particular day? [347]

A. Oh, I had fueled vessels—I first went to work there in 1946.

Q. I see. Now, you knew that on some fishing vessels the fill pipes which came up to the deck were flush and sealed with the deck, you knew that, is that right?

A. Would you state your question again?

Q. Would you read the question, please?

(Record read by the Reporter.)

A. Some types, yes, yes.

(Testimony of Charles Herbert Caldwell.)

Q. Then you also, in the years that you worked there knew there were some fill pipes that would not be flush with the deck and seamed tight with the deck at the top, is that true?

A. There are a few boats made this way, yes.

Q. And the ones that are made that way have two caps, a plate is removed on the deck of the vessel and then a cap underneath the plate is removed from the pipe itself; isn't that true?

A. Yes, sir.

Q. The intake pipe or fill in those cases, in those particular installations, is not flush or seamed tight with the deck?

A. If that were the construction it would not be sealed tight.

Q. I see. If there is an overflow on the second type we are talking about the overflow would not flow onto the deck but flow back around the fill pipe, isn't that true? [348]

A. That could be possible.

Q. Yes. Now, Mr. Caldwell, did you stand and watch anyone on the deck of the Santa Lucia during the entire fueling operation?

A. Yes, sir.

Q. You stood at one place?

A. Not the entire time, no.

Q. Incidentally, did you identify, after this talk about credit rating, did you identify the man you were talking to on the vessel as Mr. Frank Cardinale?

A. The gentleman that accepted the hose told me his name was Frank Cardinale.

(Testimony of Charles Herbert Caldwell.)

Q. Very well. Now, did you continue to watch Frank Cardinale after you handed him the gas hose? A. Yes, I did.

Q. How long did you continue to watch him?

A. Maybe a minute, two minutes. I had a short conversation with him.

Q. Then you left, and then you did not watch him, is that true?

A. No, I went about my other chores.

Q. All right. You knew, Mr. Caldwell, that there was no gage or meter at the fill vent or fill pipe of this vessel, did you not?

A. The meter is on the dock. [349]

Q. You knew that there was no meter on the boat? A. Yes.

Q. You knew that?

A. No, sir, I did not know there is no meter on the boat.

Q. Did you see a meter at the gas vent where the gas was being filled?

A. I didn't see any, no.

Q. All right, you just saw a hole, didn't you?

A. Yes, sir.

Q. Now, the meter that you had on the gas dock was, I believe you said, six feet back from the edge of the dock at this position? (Indicating.)

A. Approximately six feet.

Q. You knew that the man on the vessel could not see that meter during the fueling operation, didn't you? A. I don't think he could.

(Testimony of Charles Herbert Caldwell.)

Q. As a matter of fact, the meter was 26 inches above the highest point—the highest point of the meter was 26 inches above the floor of the dock, isn't that true?

A. The meter sat on an 8 inch wood block and the meter was roughly 18 inches high.

Q. So that would make it 26 inches?

A. Approximately.

Q. Will you tell his Honor what type of face or dial that this meter had? [350]

A. I am really not sure what type it did have. We had two different types of meters.

Q. Well, suppose you describe both of them.

A. The meters were made by Brodie. They were both the same body type, but one had a small computing space which was about four inches by six inches with figures inside that turn over; and the other type was a—had a clock type face on it, about a 12 inch clock face.

Q. And both of these, whether it was the clock face or the other type that you first described, the face or dial in both instances would not be facing the vessel as it was tied up, would it?

A. Yes, they would.

Q. You have testified that anyone on the vessel could not see the meter from the deck of the vessel.

A. I don't think he could.

Q. All right. I will ask you specifically, Mr. Caldwell, wasn't the deck of the vessel 12 feet below the gas dock?

A. This is purely an approximation. It was 15

(Testimony of Charles Herbert Caldwell.)

foot to the water level, 15 to 17 foot, depending on the tide, and he had so much freeboard above that.

Mr. Vartan: Calling your attention, counsel, to page 28, line 24 of the deposition of Charles Caldwell, the deposition being taken Friday, September 23, 1955.

“Question: Now, at that point how far [351] below the level of the sales dock was the main deck of the boat?

“Answer: Oh, that part of the deck that was forward and that was—rose from, I probably say it was around 12 feet.”

Now, you recall giving that answer to that question?

A. Yes, sir, that was an approximation.

Q. I see. You feel now that that is your best judgment, it was about 12 feet rather than 8 feet?

A. All right, 12 feet.

Mr. Silvers: Was there an answer?

Mr. Nave: He said, “All right, 12 feet.”

Q. (By Mr. Vartan): Mr. Caldwell, during this entire fueling operation the meter on the Union Oil sales dock, which you have marked on the diagram, was under your exclusive control, was it not?

A. I was the only employee there at the time.

Q. I see. No one else was present?

A. No, sir.

Q. No member of the crew was on the sales dock? A. No, sir.

Q. During the entire fueling operation, Mr. Caldwell. that meter was within your view, was it

(Testimony of Charles Herbert Caldwell.)

not? A. Part of the time.

Q. What was the position of Mr. Cardinale at the fill pipe [352] when you last saw him after handing down the hose—you stated you had a conversation with him for a minute or so—what was his position? Was he standing, kneeling, squatting, or what was he doing? A. Kneeling.

Q. He was kneeling?

A. Kneeling, filling his tank.

Q. I see. Mr. Caldwell, after you had the conversation that “She will take thirty gallons,” and you checked the meter and saw that it was at zero and you turned on the gas slow, did you continue to watch the gas meter?

A. I never said she would take thirty gallons, I said, “She would take about thirty,” purely an approximation.

Q. All right. After you heard Mr. Cardinale tell you she will take about thirty gallons, did you continue to watch the gas meter?

A. No, I didn't.

Q. There was no emergency or anything that took you away from the gas dock during this fueling operation, was there?

A. No, I didn't leave the gas dock.

Q. Now, you have told us you looked at the gas meter when it registered zero before starting the fueling operation. When did you, did you look at it again? A. I certainly did.

Q. And when you looked at it again what did it register? [353]

(Testimony of Charles Herbert Caldwell.)

A. It was approximately 20 gallons.

Q. At that point, Mr. Caldwell, when it registered 20 gallons, did you yell down to Mr. Cardinale and tell him he had taken 20 gallons, or that 20 gallons was registered on the meter? A. No.

Q. When you saw that meter showing 20 gallons did you look down at Mr. Cardinale to see what he was doing? A. No, sir.

Q. As far as you know he may not have even been there, isn't that true?

Mr. Nave: Object to that as being argumentative.

Mr. Vartan: Very well, withdraw the question.

Q. (By Mr. Vartan): Did you tell anyone else on the vessel that at that particular point the meter registered 20 gallons? A. No.

Q. What did you do, Mr. Caldwell, after you noticed the meter said 20 gallons?

A. I asked one of the crewmen if he would like to have some—if he would like to fuel his water tanks or fill his water tank.

Q. What was his answer?

A. He said yes, he would, so I passed them one of the water hoses from the dock right beside the gas hose and he put [354] it in the tank and went ahead and filled his water tank.

Q. While you were passing down the water hose the meter was within your view had you looked, at it, was it not?

Mr. Nave: I object to this, your Honor; it is all argumentative.

(Testimony of Charles Herbert Caldwell.)

Mr. Vartan: This is cross-examination.

The Court: I don't want any arguments. Objection overruled.

Mr. Vartan: I have forgotten the question. Would you read it?

(Record read.)

A. Yes, it was.

Q. (By Mr. Vartan): It was after you noticed that the meter read 20 gallons that you passed down the water hose, isn't that right?

A. It was about the same time.

Q. I see. Then how long did you figure it took to hand down the water hose—was there one water hose, by the way, or two?

A. This was the first one I gave him.

Q. All right. Then was there a second one you handed down?

A. I asked one of the crewmen if he thought he would use a lot of water, he says they might, so I gave them a second water hose.

Q. Mr. Caldwell, was the second water hose from the same [355] location as the first?

A. No, it wasn't, it was more to the south of the first one.

Q. How many feet, about?

A. It was to the south end of the gas landing.

Q. South end of the what?

A. The fuel dock, gasoline landing.

Q. Now, you have here C-2, Mr. Caldwell, the designation of the hose reel—I better put "Gas"

(Testimony of Charles Herbert Caldwell.)

under it, right? And then you said a moment ago that the water hose was close to the gasoline hose reel, is that right? A. That's right.

Q. You want to put an X where the water outlet was?

A. This is the first one right here. (Indicating.)

Q. Let's mark one at a time. C-4, what will we call that, water hose or water reel?

A. Water hose.

Q. Water hose. And then will you please put an X where the other water hose is. Now, will you please designate the other one.

A. The second hose came from this position right here.

Q. That will be C-5, water hose No. 2; right?

A. Right.

Q. About how many feet, Mr. Caldwell, separated the two water outlets, C-4 and C-5? [356]

A. Twenty-five, thirty feet.

Q. All right, you may sit down.

So that we get the thing in the proper order, when you saw the meter reading twenty gallons it was about the time you were passing the first water hose, right? A. Right.

Q. And then you walked 25 feet in order to pass the second water hose, is that right?

A. Right.

Q. And then you returned where?

A. I then returned to my office inside the sales shed and started heading my sales ticket.

Q. All right. Will you put an X where the door

(Testimony of Charles Herbert Caldwell.)

of your sales shed is? Is that where warehouse, where it is marked warehouse?

A. Yes, sir, this is the door here, this area here. (Indicating.)

Q. Is the area towards the gas line open or closed? A. Windows on both sides.

Q. And how large are those windows?

A. I really don't know.

Q. Well, from your office could you see the meter if you wanted to? A. Yes, I could.

Q. When you returned from the second water hose, which is [357] 25 feet away from the first water hose, and when you went into the sales shed, at that time did you look at the meter to ascertain what it was registering? A. No, sir.

Q. Mr. Caldwell, am I correct in saying that there was a fire extinguisher hanging on the wall on this gas dock near the meter? A. Yes, sir.

Q. Will you put an X where the fire extinguisher was hanging? A. (Witness marking.)

Mr. Vartan: C-6 for the record, will indicate where the fire extinguisher was hanging.

Q. (By Mr. Vartan): And will you describe the shape and color of that fire extinguisher for his Honor?

A. It was a red Ansul duo gas 30 pound fire extinguisher.

Q. What was its length?

A. About three feet.

Q. And what was its diameter?

(Testimony of Charles Herbert Caldwell.)

A. About 14 inches.

Q. This was a portable fire extinguisher, was it not?

A. Yes, sir.

Q. In your work for Union Oil Company had you been trained to reach for the fire extinguisher upon any actual or potential [358] danger? I mean, that follows, doesn't it?

A. No, sir. What is the danger you are trying to describe?

Q. Don't get mad at me, I am just asking you now was it part of your training with Union Oil if there is any potential danger of fire or anything else, to reach for the fire extinguisher; wasn't that part of your training?

A. Depending on the type of fire.

Q. Okay.

The Court: Was that fire extinguisher suitable for use, if you know, on an oil fire or gasoline fire?

The Witness: Yes, sir, it was. That would be the specific use of it. It would be of little use to a wood fire.

The Court: Was it packed under pressure?

The Witness: No, sir, it was a powder that has a CO2 cylinder that forces the powder out.

Q. (By Mr. Vartan): Mr. Caldwell, calling your attention to the diagram again, you have marked the meter—I will put gasoline meter here and we will mark that C-7, for the record, doesn't have a designation—and it is your testimony, is it, that you turned the flow of gas on, then you talked

(Testimony of Charles Herbert Caldwell.)

to Mr. Cardinale a minute or so, and then you handed down two water hoses, right?

A. Right.

Q. And when you handed down the first water hose you saw [359] that the meter then registered 30 gallons that had been delivered?

A. No, sir. I did not.

Q. Pardon me, 20 gallons. A. Yes.

Q. Is that true?

A. Approximately 20 gallons.

Q. All right, approximately 20. Then after you noticed that reading you walked 25 feet to the other water hose, which is marked C-5, handed down that hose and then walked back to your sales shed, which is at the corner as marked on the warehouse designation, is that true? A. Yes.

Q. And when you were in that sales shed you could see through windows the reading on that meter, couldn't you, if you had looked?

A. Yes.

Q. Did you look to see how much more than the 20 you had last read had been registered on the meter while you were at the last hose coming back?

A. No, I didn't.

Q. Okay. Mr. Caldwell, can you give us your best judgment as to how much time had elapsed from the time the flow of gasoline was turned on, by turning the valves, to a reading of the meter at 20 gallons by you? [360]

A. Approximately five or ten minutes.

Q. Will you tell us, please, with conditions or

(Testimony of Charles Herbert Caldwell.)

with the equipment you had there approximately how long it would have taken to deliver 30 gallons of gasoline?

A. Approximately ten minutes.

.Q. Wouldn't it be five to ten minutes to deliver 30 gallons with your equipment?

A. I don't know, sir, I never did time it. This is an approximation.

Q. The same deposition, page 23-A, line 14:

“Question: Well, you said that it was very slow. What did you have in mind?”

In the earlier questions, if counsel will concede, we were talking about the flow of gasoline.

“Answer: Well, I think it probably taken around five or ten minutes to put on thirty gallons. It depended a lot on how much gasoline there was in the tank that had an effect on the fluid height above it.”

Now, did you give that answer to that question?

A. Yes, sir, that's right.

Q. So it would take five to ten minutes, but it would depend on how much the fluid height of the storage gas tank was, isn't that right? [361]

A. That had an effect on it.

Q. It had an effect. When you were delivering or making this sale, Mr. Caldwell, had you advised Mr. Cardinale down below how high, what the height of the gasoline was in the storage tank?

A. No, sir.

Q. Had you told him how long it would probably take to fill 30 gallons? A. No, sir.

(Testimony of Charles Herbert Caldwell.)

Q. What was the capacity of the storage tank, the gasoline storage tank?

A. About 2,600 gallons. 2,600.

Q. How full was it, please, when this sale was being made? A. About two thirds.

Q. The greater the capacity in the storage tank, from your previous experience, the shorter the time it would take to deliver a given amount of gasoline, isn't that true? A. That's right.

Q. This was not a pump operated delivery, it was gravity flow, wasn't it? A. Yes, sir.

Q. When you looked at the meter the first time it was zero; the second time you saw the meter reading at 20, and you have already told us that—well, I will ask you again because I don't remember your exact figures, how much time [362] elapsed from the time you saw the meter at zero, opened the flow, and then when you saw it at 20 gallons?

A. I said approximately five or ten minutes.

Q. Five or ten minutes. When you walked to the second hose 25 feet away and walked back to the gas shed, how long did it take from the time you left the first water hose, and that's the time you saw it said 20 on the meter, walked to the second and came back to the gas shed, how much time elapsed? Your best judgment.

A. Well, I don't really know. I imagine it was fifteen or twenty minutes over all for the entire operation.

Q. All right. Now, you have told us you looked at the meter twice, once when it said zero, second

(Testimony of Charles Herbert Caldwell.)

when it said 20 gallons. Did you look at it a third time, Mr. Caldwell? A. Yes, sir.

Q. What was its reading, please?

A. After I had filled out my sales ticket?

Q. No, please, I don't want to interrupt you, but just answer the question. What was its reading when you saw it the third time?

A. In the neighborhood of 58 and one-half gallons.

Q. How much time had elapsed—strike that.

I will ask you, Mr. Caldwell, if it isn't a fact that before looking at the meter the third time Mr. Cardinale from the vessel yelled or shouted at you, "Haven't I got my [363] 30 gallons yet?"

A. No, sir, he did not.

Q. Well, did you advise him that more than 30 gallons had been delivered?

A. After I had noticed it was in the neighborhood of——

Mr. Nave: Your Honor please, I object to this type of cross-examination. I feel that once you ask what the conversation was this method of interrogation, I think, is improper and I object to it.

The Court: Overruled.

The witness has impressed me that he is a very truthful witness.

Mr. Vartan: Yes, your Honor.

The Court: Appears to me to be a very upstanding young man. I am very much impressed with his testimony. However, if you want to continue to examine him this way, continue to do so.

(Testimony of Charles Herbert Caldwell.)

Mr. Vartan: Well, I just want to get to the conversation.

The Court: You recall my suggestion that we start letting him tell his story in narrative form and then you might cross-examine him on that basis. However, you are well within your rights doing that, well within your rights doing that. You can continue this method of examination, but thus far I have been impressed with this man's [364] veracity.

Mr. Vartan: I am just trying to get the facts, your Honor, I am not trying to——

Q. (By Mr. Vartan): Well, give us the conversation after you noticed the third time that the meter said 58 and a half gallons. What did you do, what was said?

A. As a matter of courtesy——

The Court: Don't tell us about courtesy. What did you say?

The Witness: I said, "It looks like you will take sixty gallons."

Q. (By Mr. Vartan): And what did he say?

A. He didn't say anything to me.

The Court: Did he start cursing then or using the Lord's name?

The Witness: No, sir.

The Court: Now, was this ship a stranger to you? Had it come in there before?

The Witness: I had fueled her once before.

The Court: You recall how long ago that was?

(Testimony of Charles Herbert Caldwell.)

The Witness: Oh, it was at least two years before.

The Court: Do you recall how big the sale was at that time?

The Witness: I believe it was a diesel sale, [365] no gasoline was involved.

The Court: Were you familiar with this type of vessel?

The Witness: Not too much, no.

The Court: Were you familiar with its capacity for taking on gasoline and diesel oils?

The Witness: No, sir, I wouldn't be, they are all different.

The Court: You find that they are all different?

The Witness: Each one has their own capacity and their tanks, however they store it.

The Court: Well, now, for a vessel this size what would you say was the largest tank for gasoline that you have ever come across in these waters?

The Witness: Oh, it could be as much as a hundred gallons.

The Court: On an auxiliary engine?

The Witness: Depends on what he was fishing for. If he was fishing for albacore and had live bait tanked on he could have a larger gas capacity for more auxiliaries.

The Court: Did you know what type of fish this vessel was going after?

The Witness: Well, at that time Mr. Cardinale told me he was fishing for anchovies and sardines.

The Court: Go ahead, counsel. [366]